

103  
**ADMINISTRATION COMMENTS ON CONGRESSIONAL  
PROCUREMENT REFORM PROPOSALS AND HOW  
THEY WILL AFFECT SMALL BUSINESS**

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Y 4. SM 1:103-64

Administration Comments on Congress...

**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON PROCUREMENT, TAXATION, AND  
TOURISM  
OF THE  
COMMITTEE ON SMALL BUSINESS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRD CONGRESS  
SECOND SESSION

WASHINGTON, DC, FEBRUARY 1, 1994

Printed for the use of the Committee on Small Business

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# **ADMINISTRATION COMMENTS ON CONGRESSIONAL PROCUREMENT REFORM PROPOSALS AND HOW THEY WILL AFFECT SMALL BUSINESS**

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**TUESDAY, FEBRUARY 1, 1994**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON PROCUREMENT,  
TAXATION, AND TOURISM,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:02 a.m., in room 2359-A, Rayburn House Office Building, Hon. James H. Bilbray (chairman of the subcommittee), presiding.

Chairman BILBRAY. The hearing will come to order. It is my privilege this morning to welcome a distinguished panel of administration witnesses before the Subcommittee on Procurement, Taxation, and Tourism. Their testimony today will lead off 2 days of hearings in which the subcommittee will kick off one of the most important streamlining debates that has been proposed by the Vice President's reinventing Government proposal, the reform of the Federal procurement system.

For the better part of this last year, this subcommittee, along with the Committee on Government Operations and the House Committee on Armed Services, has devoted thousands of hours to developing proposals to reform, streamline and modernize the Federal procurement system.

Building upon the work of the Department of Defense's Section 800 panel and the Vice President's reinventing Government proposal, the last several months have seen a number of legislative proposals being put forth by the Congress. These include S. 1587 by Senator Glenn, H.R. 2238 by Chairman Conyers, and this subcommittee's H.R. 3586.

All these proposals have a great number of issues in common, and most important to this subcommittee, a fundamental change to the bidding process and bidding environment for small businesses. It is particularly in this area that this subcommittee have concentrated its work.

Issues of particular importance to the small business include: Increasing the small purchase threshold to \$100,000; creation of a commercial buying environment; notice requirements under \$25,000; small business reservation under \$2,500; creating of a Governmentwide electronic commerce procedures; and exemptions from socioeconomic and small business requirements.

Tomorrow, a number of small and minority business groups along with private business representatives will present the private sector's views of the present procurement reform proposals. Today, however, we look forward to the administration's views on these issues.

Already a number of issues of concern have arisen. Legislation before the House has linked together increases in the small purchase threshold to creation of electronic commerce in the Federal Government. This subcommittee has placed particular emphasis on this issue as the sudden increase to \$100,000 will prove disastrous to small business access to solicitations under \$100,000.

It is the subcommittee's belief that electronic commerce procedures will prove to be the solution to both this access issue and to the issues of current notification practices in contracts under \$25,000.

In addition, the subcommittee does feel a responsibility to encourage the creation of a Governmentwide electronic commerce network that will push the Federal procurement into the 21st Century.

But let me reiterate. It is imperative that above all that access for small businesses to solicitations under \$100,000 be maintained. We share the administration's concerns that changes in the current oral solicitation procedures could create a bureaucratic nightmare. It is my hope that we can find a resolution that will ensure notice and protect the access of small businesses.

In addition, a number of concerns have arisen regarding the creation of a commercial buying environment and certain exemptions that are being sought from socioeconomic and small business requirements. There has been a great deal of anxiety among the small business community on these issues. I would hope that the administration would expand on the benefits that small businesses will find in a commercial buying environment, and the status of certain proposals that were of particular concern to the small business community.

Finally, let me reiterate. It is the Congress's intention to pass significant legislation that is true to the Vice President's goals to streamline and reform the Government. I agree that we need to decrease the bureaucracy, simplify the process, and put responsibility back in the hands of the Government managers.

A Government manager should have the ability to go buy post-it notes and memo pads at the local Office Depot and provide for them in a simplified method, and not have to go through the bureaucratic nightmare of the Government procurement system.

Because we recognize the administration's desires in this area, we are certainly willing to explore possible suggestions that have been made by the administration regarding the small business reservation under \$2,500.

Again, I welcome you here today, and I look forward to the testimony that you will present.

I will turn to the ranking minority member of the entire committee, Mrs. Meyers.

[Chairman Bilbray's statement may be found in the appendix.]



Mrs. MEYERS. Thank you, Mr. Chairman. I would like to ask unanimous consent to enter the opening statement of Congressman Baker, please.

Chairman BILBRAY. Without objection, any statements by any of the Members that come today will be put into the record.

[Mr. Baker's statement may be found in the appendix.]

Mrs. MEYERS. Thank you, Mr. Chairman. I appreciate you holding this hearing on proposed procurement reforms and their possible impact on small business. It goes without saying that the procurement process is overcomplicated, inefficient, and in need of repair. Unfortunately, much of this complication is due to congressional action. However, there is a light on the horizon. The legislation that we will discuss today contains reforms that are both innovative and common sense, reforms that will break the logjams in the way the Government buys.

These are exciting changes. Some of them, like electronic commerce, have been in the works for several years. It is satisfying to see these efforts begin to pay off. But in our haste to remove needless complication, we must be careful not to destroy the necessary protections in the system.

The Federal Government must act more like a business, but we must remember that it is not a business. Protection of the taxpayers' dollars is essential. Equally important is ensuring access to Government contracting for those who have been traditionally shut out and shunted aside, small business.

Mr. Chairman, I support procurement reform 100 percent, but the reform must go both ways. It must make it easier for the Government to buy and easier for small business to have access to sell. I look forward to hearing from our witnesses, and I want to thank them all for coming.

Chairman BILBRAY. Thank you, Mrs. Meyers.

Mr. Sisisky.

Mr. SISISKY. I have no prepared statement, Mr. Chairman. I am just delighted to welcome Secretary Preston. It is the first time that she has been in a hearing. I have been attending the Armed Services Committee hearing, and I am really here just to learn about this. I think we all agree that we need to make some fundamental changes, and, hopefully, this is the right way to go. But we are certainly going to be looking at it both here and in the Armed Services Committee, particularly here as it relates to small business. I look forward to the testimony.

Chairman BILBRAY. Thank you, Mr. Sisisky.

We have a panel of three witnesses today. The first of 2 days of hearings, as I mentioned in my opening statement.

The first witness will be the Honorable Steven Kelman, Administrator, Office of Federal Procurement Policy, Office of Management and Budget.

Second, is the Honorable Colleen Preston, Deputy Undersecretary of Defense for Acquisition Reform.

Third, is Robert J. Moffitt, Associate Administrator, Procurement Assistance of the U.S. Small Business Administration.

For the record, we also have a letter from Erskine Bowles, the Administrator of the Small Business Administration, pointing out the fact that he has designated Mr. Moffitt to represent him in the

hearing. We have the greatest respect for Mr. Bowles. Anyone he would send over, we know will do an excellent job.

We will start in the following order. Mr. Kelman, you would go first; Ms. Preston; and then Mr. Moffitt. So, we will start with Mr. Kelman. We will go through all of your testimony, and then at the end we will have a series of questions from the Members who come in and out during the day.

Unfortunately, we do not have a lot of Members here. Because today is a pro forma day in the House. Unfortunately when pro forma days happen, most Members stay in their districts to work with their constituents. But there will be people coming in and out.

Mr. Kelman.

**TESTIMONY OF STEVEN KELMAN, ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY, OFFICE OF MANAGEMENT AND BUDGET**

Mr. KELMAN. Good morning, Mr. Chairman, other members of the committee and the subcommittee. I appreciate the opportunity to be here today. As I mentioned to you over the phone yesterday, Mr. Chairman, aside from my confirmation hearings in the Senate before recess, this is my first appearance as administrator before a congressional hearing. So, for the rest of you here, this may be another day and another hearing, but it is a little bit of a special day for me. I appreciate your kind words, that you would not rake me over the coals too hard today.

Chairman BILBRAY. This is your first time. So, we will try to be gentle.

Mr. KELMAN. Thank you.

Mr. SISISKY. He is speaking for himself.

Mr. KELMAN. Speaking for himself. That is right. I know he was only speaking for himself.

I also need to apologize. Our family moved down from Boston a few months ago, and we have seemed to have brought the Boston winter with us to town. I have been saying to some people who the administration is hopeful that we can get procurement reform legislation passed in the House and the Senate by springtime. But I have been a little bit vague about whether I meant Boston springtime, which is in about May or June.

Chairman BILBRAY. You didn't say which springtime.

Mr. KELMAN. That is exactly right. I left it purposefully vague.

At any rate, what I am going to do, I have submitted a statement for the record, and I am going to summarize it in the interest of time.

I wanted to start off, if I could, by commending members of this subcommittee for your work on behalf of procurement reform, including of course the introduction of H.R. 3586. I think that with the efforts of the Vice President in the national performance review, and the interest in Congress in procurement reform, we really have a unique opportunity to serve the taxpayer better by making some real advances in the area of procurement reform in this session.

I also want to confirm to you at the outset that the administration supports the strongest level of small and minority business opportunities for participation in Federal contracting. We view small

and minority owned business concerns as fundamental and critical sources of supply for the Government.

I believe and the administration believes that as we implement needed procurement changes, both through legislation and through changes within the executive branch and management practices, we will at the same time improve overall access by small and minority businesses to procurement opportunities.

Over the last 25 years, the Federal acquisition system has developed into a complex maze of laws and regulations. The system is too bureaucratic, and it is too burdensome. There are many Government unique requirements for doing business with the Federal Government that many private firms simply do not want to undertake, and refuse to bid for Government business at all. Because of their unwillingness to undertake the many special conditions for bidding on Government business.

As we are thinking about procurement reform, it is also important for all of us, both in the executive branch and the legislative branch, to keep in mind that the administration has set out and Congress has endorsed a goal of reducing the size of the Federal work force by 252,000 people.

It is expected that many of those reductions will have to come from the procurement work force. So, we have already endorsed those cuts. We now need to get procurement reform legislation passed that will allow us to make those cuts in the procurement work force without grinding the Government to a halt.

I would like briefly to discuss our views on some of the key streamlining initiatives that require legislation, especially those of concern to this subcommittee and to the small business community.

First, I would like to talk about simplified acquisition threshold and procedures. As you know, under current law, agencies are allowed to make purchases of \$25,000 or less using expedited and simplified procedures. One of the key recommendations of the Vice President's national performance review and of the DOD Section 800 panel report on streamlining acquisition has been to authorize these simplified procedures to be used up to \$100,000.

At the same time, the small business reserve established by Section 15(j) of the Small Business Act would automatically be raised to \$100,000.

I am pleased that we have reached a general agreement that there be a simplified acquisition threshold of \$100,000. I can assure you in reacting to your opening statement, Mr. Chairman, that we will work with this subcommittee to develop provisions that will ensure that small and minority business continue to receive or do receiving notice of procurement opportunities in this new range of simplified acquisitions.

Second, let me talk about electronic commerce or EC systems. As you are aware, the President in a Presidential memorandum last October 26th established a timetable for expansion of an EC system over the next few years throughout the Government.

We believe, as this committee believes, that the widespread use of electronic commerce will substantially increase the efficiency of the procurement process for the Government, and will also dramatically improve access to small businesses, by allowing any small business with a personal computer and access to a commer-

cial value added network, to learn about a whole range of possible contracting opportunities nationwide, simply by pressing a button.

Furthermore, an electric commerce system will produce better agency compliance with the Prompt Payment Act, through electronic funds transfer, and a significantly reduced paperwork burden in contracting both for industry and Government.

The administration strongly supports expansion of electronic commerce. Provisions of both H.R. 3586 and H.R. 2238 would link increases in the simplified acquisition threshold to electronic notification and electronic commerce.

The administration has opposed linking any increase in the simplified acquisition threshold to an EC requirement, because we have believed that the taxpayer needs procurement streamlining now. However, we have heard and we respect the position of the small business community regarding linkage. We are therefore willing in the context of discussions about fashioning an equitable package of provisions on issues of importance to this subcommittee to discuss how we can resolve this issue. Particularly by assuring notification and consideration of offers for procurements between \$25,000 and \$100,000. We look forward to continued discussions on this issue.

Let me talk about purchases under \$25,000. If we are to have any chance of reducing the procurement work force to comply with the \$252,000 overall work force reduction goals, we must further simplify purchases under \$25,000.

The administration therefore recommends the following. Number one, we recommend amending Section 15(j) of the Small Business Act to exempt purchases under \$2,500 or less from the small business reserve.

The Vice President has repeatedly said that progress officials in the agencies need to be able to make these kinds of purchases from readily available sources without the additional bureaucracy of going through a procurement office.

Under current procedures, agencies must check SIC codes and size standards and so forth before making these very small purchases. This makes it difficult for program people who are not experts in the intricacies of procurement to make these decisions themselves.

This proposal is an essential element in the administration's efforts to empower program managers, and reduce bureaucracy associated with purchases under \$2,500. It is a high administration priority. We very much appreciate, Mr. Chairman, your willingness in your opening statement to give very serious consideration to this important administration priority.

Second, the administration urges provisions in H.R. 3586 and H.R. 2238 that would modify current posting or notice practices for solicitations under \$25,000.

Under current provisions of the Federal Acquisition Regulations, contracting officers may orally solicit quotes from three sources and award a small purchase. The provisions of the bills that have been introduced in the House would require agencies to post a notice of small purchase opportunities for 10 days prior to award, to wait 10 days before making an award, and to consider every offer has come in during 10 days.

This would impose a very substantial burden that does not currently exist, a new burden, on a significant number of small purchases. As electronic commerce becomes operational, many of these opportunities will be in the electronic commerce system. So, this is mostly a transitional problem while electronic commerce is being implemented.

However, the administration and the executive branch very much needs some latitude in this area during this transition period, or else we will be having to add significant requirements for new Federal workers as well as lengthening procurement lead times at a time when we are supposed to be streamlining procurement. This is simply unacceptable.

Let me talk a bit about reducing obstacles to obtaining commercial items. Both the NPR and the 800 panel recognized that an essential element of maintaining an adequate industrial base for a requirement for our Nation's defense, and to encourage commercial suppliers who are refusing to do business with the Federal Government because of complex demands, is to reduce insofar as possible Government unique requirements in the contracting process that both discourage people from doing business with the Federal Government in the first place and also encourage commercial operations to separate out their commercial business from their defense business, which in turn increases the cost to the Government, because you have two separate production lines running. It also hurts the competitiveness of those businesses in the commercial marketplace.

We appreciate your efforts in providing a new definition for commercial products that will allow procurement by the Department of Defense especially of state of the art technology. The provisions of H.R. 2238 that permanently set the threshold for application of the Truth in Negotiations Act of \$500,000 for all agencies, and an exemption from commercial products are both steps in the right direction.

We believe that more can and should be done to encourage suppliers to do business with the Government, and to unify military and commercial production. It is in this context that both the 800 panel and the NPR have expressed concern about subcontracting plan requirements for commercial product.

The NPR has also expressed concern about subcontracting plan requirements for utilities. These Government unique requirements discourage some firms from doing business with the Government. They encourage firms doing Government business to segregate Government and commercial business so as to avoid these requirements on their commercial operations.

We understand, however, that small business and minority subcontracting plans are important to members of this subcommittee, and we respect these concerns, which we expect to be the topic of ongoing conversations as we move forward on this legislation.

We would like to work with you to achieve our mutual goals of encouraging use of commercial products, and also providing opportunities for small and small disadvantaged business.

Let me finally talk about the Section 1207 Program. In response to the NPR recommendation, the administration believes we can substantially increase the participation of small disadvantaged

business by expanding the Section 1207 Program currently operating within the Department of Defense to civilian agencies.

This program is a valuable tool in assisting agencies in meeting their annual small disadvantaged business goals. We believe that expansion of this program is necessary, if we are to increase the economic contributions of small disadvantaged business to the Government and to our society.

Let me conclude there, and pass the ball on to my other colleagues from the administration.

[Mr. Kelman's statement may be found in the appendix.]

Chairman BILBRAY. Yes. Secretary Preston.

#### **TESTIMONY OF COLLEEN PRESTON, DEPUTY UNDERSECRETARY OF DEFENSE FOR ACQUISITION REFORM**

Ms. PRESTON. Thank you, Mr. Chairman, and members of the committee and subcommittee. I very much appreciate the opportunity to appear here today. I am looking forward to working with this subcommittee as we together, both in the department and the administration, take the steps necessary to make acquisition reform a reality. I will do my best to answer the questions that are asked, and to provide any additional information you may require.

Mr. Chairman, with your permission, I would like to make a few preliminary remarks to develop the context of DOD's input into the administration's position on these bills. It is an administration position that we all agree on.

First of all, in DOD, as in this Nation, we are facing new political, economic, and military security challenges to the United States throughout the world. By fiscal year 1997, defense spending will have been reduced in real terms by over 40 percent compared to 1985. The reduction in the procurement account is likely to be more than 50 to 60 percent.

At the same time, the administration is committed to maintaining a strong effective force capable of deterring aggression against the United States and its allies in responding to threats anywhere U.S. national interests are at stake.

In order to meet these challenges, we believe that acquisition reform is imperative. Under the current system, DOD is often unable to buy state of the art technology, particularly from commercial suppliers. DOD is unable to buy from commercial companies, even when their costs are cheaper, or the commercial product is the only one that DOD can use to meet its needs. The DOD's costs of doing business are just too great. The management overhead costs both of DOD and its suppliers are far in excess of any commercial industry.

As Dr. Kelman just mentioned, the acquisition system is a complex web of laws, regulations, and policies that have been adopted for laudable reasons over the years. We understand that. As you know that I have been involved in the adoption of many of these provisions. They were intended to do things that were important to the system—to prevent fraud, waste, and abuse, to ensure that the Government acquisition process was fair, and to further socioeconomic objectives.

While the aim of each of these provisions alone is laudable, when combined the result is a system which is too cumbersome, and

takes too long to satisfy customer requirements. In addition, they add a cost to the product that we can no longer afford.

Thanks to the ability and dedication of thousands of people within the acquisition process, both in the Department of Defense and elsewhere in the Government, as well as our suppliers, we were able to provide the best weapons systems capable during Desert Storm. But the problem is that people did that despite the system, not because of it.

They did so at a price, both in terms of the sheer expense to the Nation and eroded public confidence in the DOD acquisition system. That is a price we can no longer afford to pay as a Nation. With reduced budgets, readiness and our technological superiority being jeopardized by the increasing portion of our budget that is attributable to what we think are nonvalue added costs, we must re-examine the way in which we do business.

No one is suggesting that there be a wholesale deletion of safeguards that have been designed to ensure the integrity of the process. Nor are we recommending the wholesale removal of laws intended to further the social policies of this great Nation.

Rather in this new environment, what we are asking is that there be a balancing of the risk associated with reducing oversight, and the cost to both industry and Government of this additional compliance.

In the case of social programs, we are asking for a balancing of the costs of applying these policies, without exclusion, to all types of purchases, against the contribution that we get from applying them to all of these purchases.

To meet the new security challenges of the post-cold war era, DOD must maintain its technological superiority and a strong globally competitive national industrial base that can support the Nation's future defense needs.

In order to do that, we must be able to: Rapidly purchase commercial and other state of the art technology and products; assist U.S. companies who are now predominantly dependent on DOD sales to transition to dual use production; aid in the transfer of military technology to the commercial sector; and preserve defense unique core capabilities.

The bottom line is that we must integrate, broaden, and maintain a national industrial base, primarily sustained by commercial demand, but capable of meeting DOD's needs.

In addition, DOD must reduce its acquisition costs. It can do that by changes internally, but in addition we need legislative help to remove some of the impediments that prevent buying in the best way possible.

DOD has begun the pursuit of acquisition reform. Our first actions were to develop a DOD position on the 1,800 page Section 800 panel recommendations, which we did starting last year.

We placed particular emphasis on two Section 800 proposals that you, Mr. Chairman, have highlighted here today. Those are: The removal of impediments to the acquisition of commercial products by waiving certain Government unique legislative requirements; streamlining the acquisition process by increasing the small purchase threshold to \$100,000, while also raising to \$100,000 the thresholds in other legislative provisions that apply only to Federal

contractors. These provisions do not apply to other companies who are not doing business with the Federal Government.

After reaching a consensus internally, we began working within the administration with OMB, OFPP, GSA, SBA, and Vice President Gore's NPR staff, on developing proposed legislation.

Of course, during that time, Mr. Chairman, you were working on your bill. The Senate was working on a bill, S. 1587. The House continued to work on iterations of H.R. 2238. The administration decided not to introduce a bill, so as not to cause further confusion and add to the provisions that were already out there for consideration.

In addition to the major bill on acquisition reform, DOD proposed the pilot programs that Congress had requested under the fiscal year 1991 DOD authorization bill. As I am sure you are aware, the Department had never been able to provide a proposal to Congress on these pilot programs in the 3 years that the law has been in place. We finally accomplished the task, but unfortunately were unable to get the proposal to Congress until the very last weeks of last session.

We hope to continue to pursue the adoption of these pilot programs, notwithstanding the larger overall acquisition reform effort, because these pilot programs also address unique laws in title 10 that were not addressed by the Section 800 recommendations.

In addition, it will take some time after legislation is enacted for the policies to be implemented. By getting these pilot programs started, we can jumpstart that process and get early savings on programs that are essentially commercial acquisitions or commercial-like acquisitions. We hope to pursue that initiative with the Armed Services Committees.

Finally, we formed two process action teams composed of a cross-functional, cross-service, and cross-agency mix of individuals. The first is one that is very critical to the committee today. It is our process action team on EC/EDI—Electronic Commerce/Electronic Data Interchange—in Government contracting. What the process action team did was on a quick turn around basis, which meant working night and day for over 3 months is analyze all of the different systems that existed in DOD. Each one of the services and DLA had their unique EC/EDI system.

The team has developed a plan to provide one face to industry, utilizing commercially available software, for processing contract actions under whatever small purchase threshold we have.

This system will allow vendors to connect with commercial value added networks of their choice to access all planned purchases in the DOD system.

It will also enable the vendor to provide a quote and for the Government to award electronically. Procedures for electronic payment are also being designed.

We got implementation off the ground with our funding on January 31st, just yesterday. Within 6 months, we believe we can get 154 DOD purchasing activities on line. By the end of a year, we hope to have 220 purchasing activities on line. By the completion of our 2 year effort, we should have 249 purchasing sites, which account for approximately 80 percent of the small purchases, utilizing EDI systems.



We are not sure that we can ever get above that 80 percent level, because there are some types of contracts that just are not amenable to an EC/EDI system. So, we have concentrated on that 80 percent. But, I want to make clear that there are going to be some purchase actions that in all probability will never go on an EC/EDI system.

While DOD is moving ahead with an EC/EDI initiative, we are also fully supporting the administration's Governmentwide effort to ensure that the DOD system is compatible and in sync with the system that will be created Governmentwide.

We are working very hard to support the Governmentwide team that has been put in place. The administrator has asked DOD and GSA to co-chair that team.

The second process action team is one that also affects small businesses in particular. That is on military unique product and process specifications and standards. This issue is one of the most difficult facing DOD. For those of you who remember going through the spare parts hearings and talking about DOD unique requirements and why we could not buy commercial items, this will be music to your ears.

We believe that the process action team has developed a plan to implement a preference for commercial items, and performance standards and specifications, unless a Government unique product is the only way practicable to meet the user's needs.

This PAT team report is going to come before our steering group this afternoon. We hope to have a final report issued by mid-February. This plan will have in it specific actions that will have to be taken to ensure that we are making progress. It is not a study, but it is an implementation plan to ensure that the current policy, which already requires DOD to buy commercial products, is actually implemented down at the buying levels.

Throughout this process, the concerns of small business have been paramount. Small businesses not only disproportionately feel the loss of business revenue as a result of DOD's downsizing, but they also disproportionately feel the unique burdens placed upon Government suppliers.

They, least of all, can afford to bear the spill-over of the additional overhead costs that are associated with doing business with the Government, because those costs spill over to their commercial products as well. The additional employees that are required to ensure compliance, the lawyers necessary to explain these Government unique rules and regulations, and the legal risk associated with an inadvertent failure to comply with a Government unique requirement that they would never even think of doing in their commercial business or think was wrong in commercial practice.

Mr. Chairman, we must do everything in our power to remove these burdens and make it easier for small businesses to sell to the Government.

I also would like to mention, Mr. Chairman, that DOD this past year has set a new record for awards to small businesses with 21.4 percent of our prime contract awards going to small business. For the first time, we exceeded the 5.0 percent threshold for awards to small and disadvantaged business with a total of \$6.2 billion in direct awards and \$2.1 billion in awards by its prime contractors.

Having set that stage, I would like to respond to your specific request to address the three main areas in the bill. Increasing the small purchase threshold, creation of a commercial purchasing environment, and electronic commerce.

As recommended by the Section 800 panel, the administration initially envisioned the creation of a simplified acquisition threshold that would not only raise the threshold to \$100,000, but also to have it automatically adjusted for inflation, so that we do not have to come back constantly to try and change it. We also support a provision similar to what is already in the DOD authorization bill, which doubles the threshold during contingency operations.

We envisioned that the bill would exempt purchases under \$2,500 from certain additional Government-unique laws, to facilitate truly simple small purchases. To broaden existing statutory exemptions that are in various socioeconomic laws, where thresholds were put in place in some cases in the 1940's, and the 1950's, and some even before then, to simply account for inflation, and to make those provisions more consistent with the existing environment.

In conjunction with this initiative, as the administrator has already indicated, we support the expansion of the Section 1207 Program to the civilian agencies. We propose increasing the current reservation for small businesses consistent with the increase in the simplified acquisition threshold, so that all purchases under \$100,000 would be reserved for small business.

We support the continuation of existing procurement programs for minority business, both above and below the \$100,000 small purchase threshold. That includes the Section 1207 Program and the 8(a) Program.

We believe that the creation of a simplified acquisition threshold at \$100,000 will be a tremendous benefit to small business. By increasing the value at which procurements are reserved from small business firms from \$25,000 to \$100,000, we will add 40,000 new contracts to that reserve.

This is important, because under the current \$25,000 reservation, in excess of 80 percent of DOD awards now go to small business. Between \$25,000 and \$100,000 where the rule of two is applied, but there is not a presumption of a set-aside, only 43.6 percent of the awards go to small business. We think that the change will have a definite impact on the number of awards that would go to small business.

In addition, as I mentioned, purchases below \$100,000 would be exempt from as many Government unique clauses as possible, making it easier for small businesses who are not versed in these unique provisions to sell to the Government.

From a contractor's perspective, if I can just highlight an example for you of how this would be simplified, it is clearly a far less complex approach if we do not use large purchase procedures. A typical nonautomated small purchase document runs about twelve pages in length. A typical large purchase solicitation runs 29 pages on average. An automated small purchase solicitation runs approximately one to 2 pages, if we were to print it out.

So there are significant differences in the complexity of the documents used, mainly attributable to these Government-unique

clauses. Of course, there are benefits to the Government that we would like to take advantage of as well.

The impact of this change on the work load in DOD can be measured by the time it takes to award small purchases versus large. Below the current \$25,000 threshold, the average lead time to award a contract is 26 days. So, if you have an emergency on a military base, or you create a new office and need to provide supplies to that office, it will take you, on average, 26 days.

I think most of us would agree that even 26 days is too long in real terms to support what people need on a day-to-day basis. But above that current \$25,000 threshold, the average lead time for simple sealed bids, even when all we are asking for is a quote or a price, is 90 days. If we have to conduct a competitive negotiation, the average goes up to 210 days. For many of our complex service contract awards, it is in excess of 300 days. So, we may have almost a year lead time to award a contract once we identify what our needs are.

As a result of cutting the procurement administrative lead time substantially for small purchases not subject to Commerce Business Daily synopsis requirements, a DOD test site reduced lead time from 20-day days to 11 days. Clearly, this will allow us to reduce our inventories, another initiative that I know many of you are interested in. In addition, we expect that this will enable us to reduce our personnel requirements by allowing each buyer to cover a greater number of orders.

With respect to the commercial purchasing environment, for many of the same reasons, we would like to see these changes and exemptions apply to the purchase of commercial items. We also want to see a significant shift from the use of military specifications to the use of commercial specifications. However, if we cannot get companies to sell us commercial products because they refuse to comply or cannot comply with Government unique requirements, then a shift from military to commercial specifications will not enhance our ability to acquire commercial items.

In order to facilitate this preference for commercial products and commercial items, we believe that the acquisition laws and regulations should exempt commercial items from a more comprehensive list of statutory requirements, including subcontracting plans, than are now included in the three bills that you have asked us to comment on.

We also believe that we need to separately define and state a clear preference for commercial items over nondevelopmental items. We want to rely on our commercial industrial base.

We strongly support the language in H.R. 3586 creating a new commercial item chapter in title 10 with a parallel chapter in the Federal Property Administrative Services Act, which does exactly that.

We also support the definition in your bill, Mr. Chairman, and believe that the definitions of commercial item in the provisions of the H.R. 3400 amendment and S. 1587 would need to be broadened to encompass this.

The benefits to small business that we see are again substantial, and I mentioned them previously. But I would also like to give you just one quote out of the Section 800 report to put this in context.

As that panel noted, it seems very unlikely that any company not already engaged in the business of selling to the Government would actually be willing to spend the money necessary to make the fundamental changes in the way that it conducts its business in return for a sale of \$100,000 or less. This may be particularly true of small businesses, which are the preferred recipients of contracts of this size.

We only have one case that I know of concerning a large company that attempted to transition to a Government complaint cost accounting standards system. After a 2 year effort and over \$2 million in expense, the company gave up and just decided that it would not sell to the Government. That is one example of the type of expense that is required in order to be able to comply with a unique government requirement.

I should mention that many small businesses are not covered by the cost accounting standards because of the threshold. So, in this particular case, it would not affect them.

The benefits to the Government are that we would get an expanded industrial base, by being able to buy from those companies who now currently are afraid to do business with the Government or will not do business with the Government.

Finally, on electronic commerce, I have already spoken about what the DOD and administration initiatives are in addition to those mentioned by the Administrator of OFPP. I would also like to say that as drafted, S. 1587 would increase the simplified acquisition threshold immediately, and allow relief from the 30 to 45 day waiting periods for awarding a contract after a solicitation has been issued.

In contrast, the H.R. 3400 amendment—the Conyers-Clinger amendment—and H.R. 3586, established different notice requirements dependent on the extent to which a Federal acquisition computer network is used. I would just like to reiterate the statements that Dr. Kelman made about tying EC/EDI improvements to the increase in the small purchase threshold.

We pledge, and the entire administration has pledged, to the President that we would do everything possible to get electronic commerce on-line. We would just ask that you not tie the increase in the small purchase threshold to EC/EDI implementation. Anything we do in the electronic commerce area is going to be a clear benefit to small businesses. As many of you are aware I am sure, right now a small business, to find out about a simplified purchase that is coming out has to visit the procurement activity to look at notices that are posted in the activity.

So they either have to make the rounds of the activities if they sell only in the local area, or they have to rely on an agent or some service that will go in on a regular basis, and pull these notices off of the bulletin boards for them.

If we get an electronic notice system, they are going to have access not only on a real time basis, but also to procurements that are not just those in the local area.

As part of this effort, DOD is also funding some work by the Small Business Administration and through DOD's outreach programs in the procurement technical assistance centers, to train small business in the use of EDI/EDI.

The benefits to the Government are that we believe we can reduce our overhead expenses, the paper associated with doing business, and reduce the time that is required to get on contract.

In conclusion, I would just like to say that acquisition reform will be a continuing effort, and we understand that. The legislation that we have asked of Congress is the first step in that process. As it evolves, we may need additional help. But key in all of our efforts should be the principle embraced by the national performance review in providing the line manager as much authority as possible to do his or her job within the confines of broadly stated policy objectives.

We have very good, smart people. What we need to do is give them the tools that they need to do their job in today's fast paced technological environment, to hold them accountable for the exercise of their judgment through the establishment of metrics to evaluate their performance.

The people within DOD know that the system must change. We need a new way of looking at the acquisition process, one that will embolden them to look for new and more efficient and effective ways to husband taxpayer resources, while protecting national security interests.

Legislative changes will be the catalyst that these employees need to see that this time we are truly serious about fundamentally changing the acquisition process.

Mr. Chairman, with that, I would like to thank you for hearing us out. I would be happy to answer any questions that you might have at the appropriate time.

[Ms. Preston's statement may be found in the appendix.]

Chairman BILBRAY. Thank you, Secretary Preston.

Mr. Moffitt.

#### **TESTIMONY OF ROBERT J. MOFFITT, ASSOCIATE ADMINISTRATOR, PROCUREMENT ASSISTANCE, SMALL BUSINESS ADMINISTRATION**

Mr. MOFFITT. Mr. Chairman, and members of the committee, it is my pleasure to be here today. Erskine Bowles has asked me to thank you and the committee for inviting SBA to discuss with you our comments concerning legislative proposals on procurement reform.

The SBA believes that there is a need for procurement reform, and believes that results could be good for small business, for the taxpayer, and for the Government. Small business is a key stakeholder in procurement reform. Therefore, it is important to keep in mind during this reform process the concerns of small business.

The SBA has long advocated that the small business community needs to have adequate notice of available Federal procurement contracts, fair opportunities to participate in these contracts, and reasonable safeguards to protect it during all phases of the procurement process.

At the White House on October 26, 1993, President Clinton and Vice President Gore announced the administration's goals and initiatives regarding procurement reform. The President's goals are to streamline procurement, save money, expand small business ac-

cess, that is expand small business access, and implement a Governmentwide electronic commerce system.

We believe that these goals must be balanced with providing safeguards and assistance to small and small disadvantaged businesses to insure that they receive their fair share of Federal procurements.

As previously mentioned, there are several bills pending that address the issue of procurement reform. While these initiatives are similar in many ways, there are several differences between them in areas that are of significant interest to small business.

There are certain key issues for small businesses that need to be considered in any procurement reform legislation. Raising the small purchase threshold would be beneficial to small business as long as there are adequate ways of notifying small business of procurement opportunities.

As I testified on May 15, 1993, the SBA believes that an electronic commerce procurement system could be very helpful in giving small businesses the ability to easily identify Federal procurement opportunities.

However, electronic commerce would only be helpful to small business if it is implemented and used by the Government procurement centers. Currently at some buying activities, small business gets only 50 percent of the dollars available for the procurements that are reserved for small business. A principal reason for this is that small businesses are not aware of these contract opportunities.

The SBA feels that the use of electronic commerce will vastly improve the awareness of contract opportunities for small business. Since I last testified on this subject, the President has urged his strong support for electronic commerce in an executive memo dated October 26, 1993. The memo directs implementation of a complete Governmentwide system of electronic commerce by January 1997. The memo notes that the electronic commerce system will be particularly beneficial to small disadvantaged and women owned businesses by providing greater access to the Federal contracting opportunities.

Furthermore, the President's memo directs the management council that will be responsible for implementing the electronic commerce system to establish a capability for the exchange of standardized notices for Governmentwide implementation.

In my previous testimony, I mentioned the result of one of the first operational EC/EDI systems being tested at Wright-Patterson Air Force Base. There were significant results from that test, and it demonstrated the ability to increase contract awards for small businesses.

In the purchases made under this test system, small businesses effectively increased the proportion of awards over the previous year from a range of 40 percent to a range of 90 percent. At the same time, the Government saved over 10 percent on purchases because of increased competition. SBA interprets these results as showing a potential for a great boost to small business involvement while producing Government savings and streamlining through the procurement process.

The implementation of electronic commerce will not only benefit small businesses by making information about intended small pur-

chases more readily available, but also for the Government and taxpayers by reducing paperwork and personnel requirements, and generally increasing efficiency while reducing costs.

In addition to reducing paperwork which benefits both the contracting personnel and the small businesses, it is also simple for firms using the system to submit their quotes.

The small business community has stressed that it is important that electronic commerce systems be functionally compatible from agency to agency and procurement center to procurement center. Otherwise, it would be extremely expensive for small businesses to access the different systems. Many functionally different systems requiring different software packages would discourage rather than stimulate the interest of small businesses.

The bills, with the exception of H.R. 2238, would allow direct contracting with 8(a) firms. As you know, SBA now enters into contracts with Federal agencies and subcontracts performance to eligible 8(a) firms. This requires a great investment of time by procuring agency personnel and the SBA. Time and paperwork could be saved if SBA entered into agreements with Federal agencies to delegate contract award and administration authority to Federal agencies.

SBA supports direct contracting, only if certain safeguards would be included. We believe that Government agencies would be encouraged to provide greater contracting opportunities to 8(a) firms if there were less paperwork involved in the 8(a) contract award and administration process.

To do this, SBA would be allowed to delegate contract award and administration functions to procuring agencies. However, we believe that it is important that SBA retain the right to revoke this delegated authority if an agency violates SBA's regulations, Federal acquisition regulations, or other terms of the agreement. SBA should retain the right to continue to contract for the 8(a) Program on specific terms, and SBA should also retain the authority to resolve disputes regarding 8(a) contract matters.

H.R. 2238 contains a proposal for test programs that include some provisions that cause our small business customers concern, because they would likely result in prequalification of sources and prejudgment of capabilities. The provisions of this bill would permit the introduction of a variety of tests including prequalification.

The SBA has historically opposed prequalification of offerors, because it tends to discourage newly established small businesses from involvement in the Government contracts process. Additionally, we believe that prequalification undermines the right of small business to an SBA Review under the Certificate of Competency Program.

Although technical data rights is not addressed in the legislation before us, it is a topic of importance and needs to be mentioned. The issue of technical data rights is complex, and various business groups are divided on the proposed changes contained in Section 807, the technical data advisory committee report.

The committee, in outlining their recommendations, had a very difficult task trying to decide the issues of ownership, repository, and availability of technical data. We have been approached by small business groups representing both sides of the issue, those

with development and design capabilities, and those with only the capability to manufacture spare and replacement parts.

We believe that if the Government funds, either directly or indirectly, the development of a process or product, then the technical data describing that process or product should be made available at the Government's discretion for competitive purposes.

Because ownership of technical data is a controversial issue with significant impact on small business and the Government, I urge that careful consideration be given to the needs of small business manufacturers before a final position is accepted.

The SBA would also like to comment on a recommendation made by the DOD Section 800 panel, which we strongly support. Simply put, the panel recommends the repeal of the provision related to SBA's Certificate of Competency Program.

Section 804 of the Defense Authorization Act of 1993, which changed the COC process for DOD, NASA, and the Coast Guard actually lengthens the procurement process, complicated the job of the contracting officer, and weakened the COC process. We support the panel's recommendation to repeal this legislation. We certainly do not support expanding this section to include all Government agencies.

Finally, as we have testified in the past, SBA supports expanding the benefits of the small disadvantaged business program now operating in the Department of Defense. We believe that all procuring agencies should be given the authority to establish set-asides for small disadvantaged business in order to enhance the possibility that they can increase awards to that segment of the small business community.

Mr. Chairman, procurement reform is a complex issue that must achieve a careful balance between two of the goals that the President has outlined for his administration. One being streamlining and simplifying the Federal Government; and two supporting small, small disadvantaged, and women owned business.

The SBA appreciates this opportunity to let our views be known on this important issue, and we look forward to continuing to work together with the small business community, the Congress, and the administration in reforming procurement laws.

Again, thank you for the opportunity to offer our comments. I will be happy to answer any questions.

[Mr. Moffitt's statement may be found in the appendix.]

Chairman BILBRAY. Thank you, Mr. Moffitt. I am going to ask a couple of questions just to start out, and then let my colleagues, and then I will come back to finish my questions.

But Mr. Kelman and Secretary Preston, you have heard of the memo that was referred to by Mr. Moffitt from the President saying that he would want an EDI system Governmentwide by January, 1997.

Can you meet that requirement, is that realistic?

Mr. KELMAN. What the President's executive memo states is that we have a system Governmentwide that insofar as practicable by January 1997 is actually doing solicitations, taking quotes, and making awards electronically.

I think that we will have by January, 1997 an EC capability throughout the Federal Government. I think that it will not be



used uniformly, and it will not be used for all transactions. I have been speaking to some folks from the private sector who have experience in trying to ramp up electronic data interchange within the private sector. They have pointed out to us that it takes time, and there are a lot of technical challenges.

In fact, what the Government is trying to do is in many ways more difficult than what private sector firms have tried to do. Because in many cases the private sector firms, Mr. Chairman, are interacting with a small number of vendors who they already have. We have more ambitious goals within the Government. We are trying to allow Government to interact with any small business out there who wishes to do business with the Federal Government, not just a small group of preferred vendors that a private sector firm might already have in its own operation.

So you are absolutely right in your question. It is a difficult challenge. There is a lot of enthusiasm and commitment not just within the administration. But certainly, as Ms. Preston indicated, the kind of incredible day and night effort that some very dedicated people at the Defense Department have been putting into this effort. Also I would add in a number of the civilian agencies there is a lot of dedication on this.

We are going to be trying our best. I think it would be unfair for us or misleading for us to state to you, nor does the Presidential memorandum state, that in January 1997 every small purchase is going to be done by EC. We do hope to have some EC capability within every agency by January 1997, and to be doing a significant number of transactions by that time, but it is a tough process.

Chairman BILBRAY. Secretary Preston, you mentioned that within 2 years that 80 percent of the transactions could be up on some sort of EDI system, or electronic notebook system, or some way where people can have access.

The 80 percent of the volume activities, is that 80 percent of the dollar amounts too?

Ms. PRESTON. No, sir. That is a very small of the dollar amounts that we do. As you know, the proportion of our contract actions that are below \$25,000 right now is about 98 percent. However, that is only 5 percent of our contract dollars. When you increase the threshold to \$100,000, we pick up 40,000 new contracts. But we also pick up an additional 120,000 contract actions.

The difference is things such as purchase orders on existing contracts. So, the benefit to the Government in terms of administration is much greater than just the 40,000 new contracts added to those subject to the use of simplified techniques. But, it is a fairly small part of DOD's dollar volume, because of the cost of major weapons systems it skew the costs phenomenally.

Chairman BILBRAY. Serving on the Armed Services Committee, I recognize the costs of the big weapons systems.

If 5 percent of the business is under \$25,000, is that what you are saying right now, about 5 percent of the dollars?

Ms. PRESTON. Yes.

Chairman BILBRAY. When we go to \$100,000, what percentage would be the dollar volume, would that be 10 or 7 percent?

Ms. PRESTON. Actually, I can look that up for you, sir. I do not remember it right off the top of my head.

Chairman BILBRAY. You can submit it to the committee for the record.

Ms. PRESTON. OK.

We get 99 percent of our contract actions, and I can give you the figures on the dollar values very quickly here. We get about \$2 billion worth of additional contracts in terms of value.

Chairman BILBRAY. Where is the money going to come from to implement the EDI system, Mr. Kelman and Ms. Preston?

Mr. KELMAN. There is going to have to be provision over the years in agency budgets basically for buying some off the shelf software to attach to PC's or local area networks that folks have in their buying organizations. Then some sort of per transaction cost for tying into a hub or something like that that gets the information into a central point so that it can go out to small businesses out there.

As we are beginning to try to roll out this system, the agencies are going to be needing to take those investments and ongoing expenses into account in their budgets. I think that still for fiscal year 1995 that we are talking quite modest amounts, outside of DOD. DOD is making a major infrastructural investment in setting up a hub network to run this system.

But outside of DOD, I think that the spending will be fairly modest. Keep in mind that we are going to get great savings in the productivity of our procurement work force, and the ability to downsize the procurement work force. We are also hoping for savings as the experiments at Wright-Patterson have indicated in the cost of what we buy. So, we would expect it to be a good investment. But there are going to need to be some expenditures to get those savings.

Chairman BILBRAY. This is like base closing where it is going to cost us a lot of up front money to eventually save money down the line, or are we going to be able to save money right off the bat?

Ms. PRESTON. Mr. Chairman, I think I would compare it to base closures—it is going to take a little bit of investment up front. While we are going to see some amount of savings immediately, it is going to take a little while for the larger dollar savings to occur. We would not expect to see significant savings in DOD even on the implementation schedule that we have, for at least another year. We have already had to come up with the money out of this year's budget to be able to fund the effort to put in the backbone, the architecture for the system.

But it is an electronic commerce, architecture that not only will be used within DOD for procurement, but it also will be used for all of the other electronic processes that are going to be needed. For example we are going to put transportation functions on this. We are going to put a lot of other functional areas on that backbone. So, it is money that needs to be invested no matter what we do.

If I could, I would just like to correct my statement previously about the percentage of the dollars under \$25,000. I found my data sheet here, and I did not remember correctly the numbers. Purchases under \$25,000 account for about 11 percent of the total dollars in DOD. Between \$25,000 and \$100,000, we pick up an additional 5 percent. So, the total would be about 16 percent of all DOD dollars and 99 percent of the contract actions.

Chairman BILBRAY. Thank you.

Mr. Sisisky.

Mr. SISISKY. Thank you.

Let me just follow up on the EC.

Dr. Kelman, the Department of Defense is well ahead of the rest of the Government. We have to be sure for small business that yours will be compatible. We do not want two different systems.

Can you assure us?

Mr. KELMAN. Absolutely, yes. The President has committed in his Presidential memorandum on electronic commerce and the administration is committed to providing a single face to industry. Right now, we are going on at least I think a moderately unprecedented — I am new to Government, so I am not sure that it is completely unprecedented, but they are telling me that it is pretty unprecedented — interagency effort where we have about 45 or 50 people on loan from essentially every cabinet department including DOD and the civilian side, working out at Baileys Crossroads between now and the end of March to meet the first milestone of the President's executive memorandum, which is developing an overall architecture to the system.

Very crucial in that effort is the standard that you are setting in your question, sir. Namely that we have systems that will provide a single face to small business or other vendors out there who want to learn about purchasing opportunities, whether they be at DOD or on the civilian side. We are committed to that strategy.

Mr. SISISKY. That is fine.

Mr. Moffitt, of course, you are worried, and the Small Business Administration is worried, as I am, that if it is implemented, would it be used by the Government procurement centers?

What part is SBA playing in the development of this ECI to be sure that small businesses are a part, or are you playing a part in it?

Mr. MOFFITT. Yes, we are playing a part in the development of the system. My staff and I have been in contact with Mrs. Preston's staff. We have received briefings on the report of the task group that she put together. We will provide staff support for the group that is meeting out at Baileys Crossroads that Dr. Kelman mentioned.

So yes, we are involved in the process, and we will continue to be involved.

Mr. SISISKY. I am delighted to hear that.

Now on MILSPEC's. I might add, Dr. Kelman, that we have been working on this — I have been in Congress 12 years now — and I think that we have been working on this, and we have directed that the Department of Defense do this, and you have not done it.

Now you have not had Secretary Preston in there over those 12 years, or of course Dr. Perry, who is interested. But you know, there is some unique thing going on here.

How are you going to do it, I mean really do it? Because, as you know, my subcommittee on the Armed Services is responsible for the oversight on that. I am going to give you a fit, because if we do not change that, then nothing is going to work. I can tell you.

Ms. PRESTON. I know what an astute businessman you are. So, I know better than to try to do something like that. I must say that

the highlight of my tenure as general counsel on the Armed Services Committee was when I supported Mr. Kasich on his efforts to change military specifications, we went over to the floor with his pair of boxer shorts, and identified the military specs on those.

I have no intention of allowing DOD to get into that situation again. I believe that there is a fundamental problem with the procurement process. That is that we have made it virtually impossible for anyone to take risks. They are so afraid of being second-guessed, and being chastised by the IG, or being chastised by GAO.

Second, of not performing their mission. If I am the contracting officer who is trying to provide or buy a spare part for an aircraft that I know is going to be used in a squadron that is transporting equipment to Bosnia for example, and someone tells me that I have to quit buying from the supplier that I have been using for brake assemblies on that aircraft, and that I must go out and buy on a commercial specification or whatever, am I going to take a chance on doing that? No, particularly if I think it is going to impact mission readiness. This is the pressure that contracting officers are under. Can I keep my aircraft flying a certain percentage of the time?

When you look at that situation, we do not provide any incentive for people to change the way they do business. Or even looking at something more mundane. I remember arguing about aluminum siding for houses. When I first came over to the Hill, it was a protest that I had worked when I was in the Department of Defense. Two years later I was still working it, but this time for then Congressman Aspin.

The issue was whether or not you had to use a certain painting process that was specifically mandated. Well, what had happened is some poor contracting officer had gone out on a contract for housing, and got this aluminum siding, and it rusted where the bolts went through the siding to bolt on to the house. And it had basically just disintegrated.

So the next time they bought aluminum siding, they mandated a specific painting process to ensure the siding bolt holes were painted and would not rust. Well, it turned out that in the meantime the commercial standard had changed, and the industry was now seal coating all aluminum siding. So, it did not make one hoot of difference how the siding was painted. But, those contracting officers were not going to get caught again, because they knew they were never going to get another chance to replace that aluminum siding if they were wrong. They may not get O&M money for another 10 or 15 years.

We have got to give them an incentive. That is the place where we have got to work MILSPEC reform, down at that level, not by edicts from on high saying that you will use commercial specifications. That is the approach that we have taken in the past.

Mr. SISISKY. Well, you have a great advantage. Because my experience up here is that particularly in the military the procurement offices are very bright people.

You might remember that, Dr. Kelman, as they get out of the service. They are a wonderful resource in Government procurement. I am serious about that.

Mr. KELMAN. We would like to have them come to some of our executive programs back at Harvard.

Mr. SISISKY. These people are well trained and very good. So, we are blessed with that. But somewhere it has to come from the top: "Thou shalt do it." When you have 27 pages of MILSPEC's for a dog comb, it is absolutely crazy.

I wanted to ask another question or two.

Are services included in the definition of commercial products?

Ms. PRESTON. Only those that are incidental to the commercial item being provided. Service is a separate category. We did not tackle it. The reason that we did not try to deal with that is because the Section 800 report did not deal with it.

Chairman BILBRAY. Mr. Sisisky, it is in our bill refining it as such.

Mr. SISISKY. Is it?

Chairman BILBRAY. Yes.

Mr. SISISKY. Good. It shows that I did not read the bill, but that is not unusual. I would not have understood it anyway if I read it.

As you know, particularly the legislative reforms have come out of necessity because of waste, fraud, and abuse.

Are you satisfied that under this new bill, particularly the fraud and abuse — obviously, anything that big will have some of it — but are you satisfied that we have enough controls in there that we do not have to go back into passing laws again?

Ms. PRESTON. Well, looking at our record with all of the laws that we have on the books so far, I am not sure that it has made a tremendous difference. We still continue to have people who try to take advantage of the system.

I would analogize it to just how many policemen is it worth putting on the street to make sure that no one parks overtime at a parking meter or parks illegally. At some point you have diminishing returns. I believe we are at that point. We are spending too much to ensure that the system is perfect when we know it will never be perfect. What we need to do is step back a little bit and say yes, we can and should assume a little risk. Based upon the amount of money that we are going to save by stepping back from some of these rules, not all of them, but some of the them, we ought to be able to take that risk.

That is why we very carefully crafted these initiatives within the administration to focus on specific areas—commercial item acquisition and simplified acquisitions. We are not tackling the big things right now. We are not now advocating these changes for the bigger dollar value items.

Mr. SISISKY. Mr. Chairman, if my colleagues will indulge me one more moment, because I do not want to have any misunderstanding. This committee has done a tremendous job with the social policies of this Nation, the 8(a) Programs and things like that.

Colleen, I just want to be sure that nobody misunderstands what you said. Because I do not understand it. You said that in the case of social programs that the cost of applying these policies without excluding particular types of purchases must be balanced against the contributions to be made by requiring compliance without exception. Tell me what that means.

Ms. PRESTON. OK.

Mr. SISISKY. I read that sentence four times now, and I still do not understand it.

Ms. PRESTON. I am sorry. I guess that was not as clear as it could be.

Mr. SISISKY. I want you to understand that she is not only my friend but a constituent too, Mr. Chairman.

Ms. PRESTON. Actually, my husband is your constituent.

Mr. KELMAN. She is never home.

Ms. PRESTON. He is home alone.

Mr. KELMAN. She is at the Pentagon building.

Ms. PRESTON. What we were trying to say is that you get a certain benefit from applying these social programs. But, again, you get to a point of diminishing returns. What we are saying is that if you try to impose these programs on commercial companies who are not now complying with them in the way that the Government requires them, they will not do business with us.

Most companies have a drug free work place program. Most large companies have a minority subcontracting program or something of that nature. Now whether or not they are as effective as they would be with Government oversight is something that is certainly questionable.

What we are saying is tackle the big companies, and tackle the big purchases. Let those people who are making sales to the Government that are less than \$100,000 off the hook. Because according to the Action 800 panel the chances are they are not really complying with these programs anyway. We have never had an audit to look at how many people doing business under the small purchase threshold are signing up to certifications like the Walsh-Healey, and the Davis-Bacon, and the Service Contract Act, and are really complying with them. Are they just signing the certifications without knowing who they are signing up to?

The same thing with commercial items. We know the Government buys commercial items. We know we buy them from commercial companies, and yet many of these companies do not have the kinds of programs that you would see in defense companies—Boeing McDonnell-Douglas, et. cetera.

All we are saying is let's spend our time trying to get the big guys, and making sure that their programs are effective. Let's not try and tackle companies who are just going to say we will not do business with you anyway, because it is not worth the cost.

Five years ago DOD purchases accounted for 75 percent of the U.S. semiconductor market. By 1995, DOD will be a little more than 1 percent. If anybody thinks we can dictate to those companies the terms and conditions of their sales to the Government, they are crazy. They are telling us how they will sell to the Government. Our answer is usually well, I guess we cannot buy from you. Or, they figure some way to get around the rule by selling through someone else.

Mr. SISISKY. Thank you.

Chairman BILBRAY. Mr. Klink.

Mr. KLINK. Thank you. I wanted to talk a little bit about the sub-tier levels, and how they might affect that. I read, Madam Secretary, that you said 21.4 percent of all prime contract awards, that it was a new record for small businesses in 1993. Yet the SBA has

estimated that less than 10 percent of all defense procurement dollars for durable goods go to small firms. Worse yet, they say that these contracts do not always go to small U.S. firms. That quite often, there is some \$10 billion in defense related taxpayer dollars that is used to purchase from foreign manufactured defense components.

Are we headed in a direction that will help us to monitor this on the sub-tier level when out-sourcing takes place, so that we know?

Will this also improve not just the prime contractors, but the subcontractors' ability also to get involved in this marketplace?

Mr. PRESTON. I am not sure where the SBA 10 percent figures came from. I think we keep fairly good records on what our percentages are for small business in the Federal procurement data system.

But in answer to your question as to how can we track that at the sub-tier level right now, it is a difficult process because most companies do not keep records on a contract by contract basis. In other words, they would keep records on what they are doing on an overall basis. But it is more difficult for them to say they are going to stop their production run for a particular item, which the Government is also purchasing, and determine how much of that particular item was purchased from a small business supplier.

For this reason we want one pilot program to utilize company-wide goals for subcontracting with small and small disadvantaged business. I would conclude we do have a problem in collecting the statistics, and that we will lose that visibility if we do not collect those statistics with respect to commercial items. However, we in the Department of Defense are willing to commit to maintaining our goals at the same level for small and small disadvantaged business participation, even if we could not count those purchases that we made from commercial suppliers.

Chairman BILBRAY. On the House Armed Services Committee, I know that we have certain commitments to our NATO allies that will buy a certain amount of equipment. Like the Beretta pistol is used in many of the services. It is a requirement to be NATO standard.

Are those figures in there of what we buy out there, a certain point being foreign suppliers where we have NATO commitments and others?

Ms. PRESTON. Certainly, there is a percentage of dollars that will probably not ever be available to small business, because of cooperative agreements, because we treat Canada as part of the industrial base, and because we have mutual cooperation agreements with our NATO allies and other countries. In addition, some contracts by definition if awarded to a small business would make the company no longer a small business. So, yes, there is a percentage of dollars that will, in all likelihood, never be available for small business.

Mr. KELMAN. Congressman Klink, if I could just add for the record. I have the figures here from the Small Business Administration for fiscal year 1992 on DOD purchases from small business. These are SBA figures that show for fiscal year 1992 that 20.5 percent of the dollar value of total DOD procurements which—

Mr. KLINK. That is the total?

Mr. KELMAN. I am sorry.

Mr. KLINK. Of the total figure?

Mr. KELMAN. Of the total figure, that is correct.

Mr. KLINK. All right.

Mr. KELMAN. So, they were meeting the Governmentwide goal that has been established by SBA in cooperation with the Office of Federal Procurement Policy.

Mr. KLINK. Getting back to my previous question though, do you see this as allowing more subcontractors to also get involved in Government bidding, and maybe therefore bringing down some of the costs involved?

If I am reading it correctly, most of the testimony was aimed at the prime contracting.

Does that improved accessibility come also at the subcontracting level?

Ms. PRESTON. If I might answer that.

Mr. KLINK. Yes.

Ms. PRESTON. One of the big issues that we were dealing with in acquisition reform is what this does to subcontractors. It is one thing to say that we are going to make the major prime contractors that are uniquely defense contractors comply with certain things. But our biggest worry is subcontractors, who often are again small businesses and not familiar with Government unique rules and regulations. Then all of these things are flowed down to them from the prime contractor. So, we are that there is relief for these subcontractors as well.

Mr. KELMAN. If I could just add to that. I think that one of the problems is that often at the prime contracting level that the prime contractors sell directly to the Government, and they have experience in dealing with the Government. They have developed these systems over the years that often are very costly, but they have developed the systems over the years.

A lot of times their subs do not directly sell to the Government. They are essentially wholly commercial entities that look at all of these requirements, and just are completely confused by them. They are not used to dealing with the Government, and have a harder time complying with all of the various regulatory requirements.

Mr. KLINK. As one of the newer Members of Congress, maybe I do not understand completely a lot of what is being said. But let me boil this down in maybe an oversimplification. Part of what you are talking about when you say that you want to be able to go to commercial standards on some of these purchases.

In other words, the stories we have heard about, the \$500 hammer, the \$1,000 wrench, the \$1,500 toilet seat. You are talking about if you need a hammer, if you need a wrench, if you need a toilet seat, you may be able to just go out and buy one that is commercially made. So, those items will begin to disappear. Those news stories that tarnish our Government's ability to do business will begin to disappear.

Mr. KELMAN. That is correct.

Mr. KLINK. Is that what we are talking about?

Mr. KELMAN. Yes.



Ms. PRESTON. That is it exactly. That was one of the points I would like to mention is so critical in getting the \$2,500 exemption. A lot of these statutes have no exemption level — in other words, they apply all the way down to zero dollars. So, we cannot go out to a hardware store and purchase something, because we have to have a contract with the hardware store that says they have certified compliance with all of the laws that have zero dollar thresholds before we can buy from them.

Mr. KLINK. Thank you very much.

Chairman BILBRAY. Mrs. Clayton.

Ms. CLAYTON. Thank you, Mr. Chairman.

I would ask for unanimous consent to enter my opening statement, if I may, please.

Chairman BILBRAY. Without objection, all statements will be put into the record that wish to be submitted.

Ms. CLAYTON. Thank you.

[Ms. Clayton's statement may be found in the appendix.]

Ms. CLAYTON. One to the Small Business Administration. I was struck by your analogy of — well, let me preface my statement. I think the procurement reform I strongly support. But I am also supportive of that as we look at some balance. So, I am struck by the SBA analysis of the President's plan where he says that to do this that the SBA should be allowed to delegate contracts awards — I am sorry, I am in the wrong place.

Where you set out the principle of the President's goal. You said, "To streamline procurement, to save money, and expand small business access, and to implement a Governmentwide electronic commerce system."

When you have got to expand small business access, and you emphasize expand small business access, do you feel that there may be some contradiction between expanding small business access and raising the threshold to \$100,000?

Mr. MOFFITT. Small businesses have told us time and time again that a major impediment to selling to the Government is the lack of knowledge of procurement opportunities. I think that implementing electronic commerce along with raising the threshold and raising the small business reserve will provide adequate ratification, and will expand contracting opportunities available to small business.

So I do not necessarily see that raising the threshold is adverse to small business, as long as there is adequate notice of those procurement opportunities.

Ms. CLAYTON. Let me just expand that.

In raising the threshold, do you not see it possible of small entrepreneurs being deterred from that? There may be small businesses that can do \$50,000 but just could not do \$100,000.

When that threshold is raised, do you not feel that automatic elevation without adequate protection could possibly rule out a number of persons?

Mr. MOFFITT. If there is not adequate notice of the opportunities, I would be concerned.

Ms. CLAYTON. You think the notice is the difference?

Mr. MOFFITT. Yes.

Ms. CLAYTON. It is not capacity.

Mr. MOFFITT. It is not capacity in my estimation.

Ms. CLAYTON. So, many small businesses out there that do \$50,000 and have not done \$100,000, there is not a capacity issue about resources or equipment? Help me understand why.

Mr. MOFFITT. Well, small businesses have a wide range of capabilities. By raising the threshold to \$100,000, there will still be significant procurement opportunities in the \$25,000 to \$50,000 range for firms with small capabilities. But there also would be more opportunities for the small businesses that have greater capabilities.

Ms. CLAYTON. Secretary Preston, maybe you can help me to understand. I was struck by the fact that 11 percent of those who are below \$25,000 doing dollar amount I guess of the small business. If we raise it to the \$100,000, we will pick up an additional 40,000 contracts. Essentially, we raise it 16 percent of the dollar amount spent by DOD.

Ms. PRESTON. It is 16 percent of what DOD spends.

Ms. CLAYTON. Yes, 16 percent of the total expenditure of DOD.

Ms. PRESTON. Correct, are under \$100,000.

Ms. CLAYTON. Would be under \$100,000?

Ms. PRESTON. Correct.

Ms. CLAYTON. I thought I understood you to say that may represent 99 percent of the contracts?

Ms. PRESTON. Yes.

Ms. CLAYTON. Another way perhaps to rephrase that is 1 percent of the contracts represents 84 percent of the expenditure.

Ms. PRESTON. That is correct.

Ms. CLAYTON. In my mind it is understandable why you can add the efficiency portion to that. It is far more easy to manage 1 percent than it is to manage 99 percent. So, if you are trying to balance efficiency as a way to streamline Government without a counter balance of access, there is the possibility to deny access to smaller business people without meaning to do it.

There is a principle that is kind of contradictory there. Because if the idea is, and I agree that we need to save money. I would like to ask you the dollars you propose we are going to save. We do need to save money. But if the strength is on saving the money, you can just deal with that 1 percent. You are dealing with 84 percent of the expenditure.

So as we look at trying to make the savings, it seems to me that there has to be some extra protection for small business. Or otherwise, we streamline Government. I am oversimplifying this, by perhaps the troublesome 16 percent of the money and some 90 percent of the trouble that these contractors have to deal with. I am not sure that is in the interest of small business.

Mr. KELMAN. Congresswoman Clayton, that is a very good question, and let me address it if I could.

I think that by raising the simplified acquisition threshold to \$100,000 and by taking other steps to make it simpler for Government to buy things if it buys under \$100,000, that we are in fact, encouraging the Government to make more purchases under \$100,000.

The missing element in the equation, and I think it is a very good equation that you are bringing to our attention, the missing

element is to buy those larger purchases, the over \$100,000, that we have a very much more complicated system.

Ms. CLAYTON. I understand.

Mr. KELMAN. So, in fact, if agencies can have a simpler system for buying the smaller purchases under \$100,000, which is what we are trying to implement here, that is going to encourage them to move some purchases from the over \$100,000 area where the procedures are more complicated into the under \$100,000 area. Since it is obviously hard for small business to supply a \$50 million contract to the Government or whatever, actually increasing the ability to make purchases more simply in that under \$100,000 range is going to encourage the Government to make more purchases in that smaller area where small businesses are able to compete more easily.

Ms. CLAYTON. Thank you. I appreciate that.

How do you implement that? I think that is possible. Is just notice going to do that? I mean you have changed the criteria, and the notice is giving.

Ms. PRESTON. Let me see if I can clarify that issue. There are two competing interests here. One is the efficiency that the Government achieves by raising the simplified acquisition threshold, and the other is what small business gets out of the raising of the threshold.

The reason that we concentrate on that in terms of Government efficiency is because 99 percent of our people, and our work, and our time, is spent on those smaller contracts, when in fact, we would like to spend most of the time on that other 84 percent of the dollars that we should be concentrating on.

Exactly the point that Dr. Kelman made, is that it causes contract bundling, an issue that has come up before this subcommittee constantly. It is now so difficult to get a contract that people try to get everything they can under that one contract, so that they do not have to go through the process again.

The concern about notice from small businesses is that under \$25,000 under the small purchase threshold, there are different notice requirements than there would be for contracts over the threshold.

Small businesses are concerned that if we increase the threshold to \$100,000, they are not going to get adequate notice of those purchases under \$100,000, because the protections will not be there in the law that now exist between \$25,000 and \$100,000.

We think reserving all contracts under \$100,000 for small businesses and ensuring that small businesses are the preferred alternative, unless someone can show that two or more small businesses cannot compete, we can ensure these awards will continue to go to small business. In fact, we believe we can increase that percentage, even without electronic notice. But, of course, we would like to get to electronic notice as fast as possible, because it clearly is going to provide an additional benefit to small business.

Ms. CLAYTON. I do not mean to suggest that the only way that we can do business with small business is through an inefficient method. I just think that sometimes that the efficiency quotient is so much of our priority that we fail to understand that some struc-

tures have to be placed to protect them. One of the structures is there to give that access to small business is the 8(a) set-aside.

Is that there for the \$100,000 as well?

Ms. PRESTON. Under the \$100,000 threshold, the 8(a) Program would continue.

Ms. CLAYTON. You had a statement. I just want to ask this, Mr. Chairman, and I will be through. Well, I cannot find it, so I will write you.

Ms. PRESTON. OK.

Ms. CLAYTON. Thank you, Mr. Chairman.

Chairman BILBRAY. Thank you.

Representing the minority, Mr. Rowe. You have some questions on behalf of Mr. Baker and Mrs. Meyers.

Mr. ROWE. Thank you, Mr. Chairman.

Mr. Kelman, I just wanted to ask a couple of quick questions. You mentioned in your statement that you thought electronic commerce was going to help with the enforcement of the Prompt Payment Act.

I wanted to ask you how you saw that coming about, and whether you thought electronic commerce was somehow going to clear up the question of privity that the contracting officers regularly bring up as an excuse for not enforcing prompt payment?

Mr. KELMAN. I think that electronic commerce opens the possibility of payment through electronic funds transfer, which is a quicker method of getting payment through the system both internally within the Government and out to vendors whom we are paying. It does not deal with legal or other issues surrounding prompt payment. But it does reengineer the operation, so that it can work more quickly and just get it to work through the bureaucracy more quickly.

Mr. ROWE. Electronic funds gets the money to the primes faster, but what about the enforcement problem with the subs? I know that just recently Eleanor Spector over at the Department of Defense had to spend some serious time addressing this issue with the contracting officers, because of their failure to enforce.

Mr. KELMAN. I think that the vast majority of purchases done by electronic commerce for the foreseeable future are going to be quite small dollar volume purchases where subcontractors are not generally an issue.

Mr. ROWE. Finally, the issue of linkage continues to be something that we talked about a great deal in our private meetings and, of course, here.

If, as Ms. Preston said, you really want to make it clear to the procurement culture that we are serious about change now, why is linkage a bad idea? It seems like a legislative action that says, "we are serious. Until you give us electronic commerce, which will give small business adequate notice, you are not going to get the benefits of simplified acquisition."

Mr. KELMAN. Well, certainly at a minimum, we have already stated that we support improving notice possibilities through the Commerce Business Daily, Electronic Commerce Business Daily and/or Electronic Commerce, as we increase the simplified acquisition threshold.

That is to say, as you know, traditionally under the small purchase threshold you did not have a Commerce Business Daily publication requirement, and you did not have a notice period, and you did not have a wait period. Earlier the administration had been saying that we support increasing the threshold from \$25,000 to \$100,000, and continuing the traditional situation. That is to say up to \$100,000 that we would have no requirement for Commerce Business Daily, and not the same notification or notice requirements.

We have heard the worries of the small business community and of members of this subcommittee and others about the dangers that that increase might create absent an effort to improve the notification requirements. Listening to those concerns, those legitimate concerns, the administration is now saying we support various steps to assure through the Commerce Business Daily, Electronic Notification and/or Electronic Commerce notice, appropriate waiting periods, and appropriate solicitation times, shortened as you move into an electronic environment.

But we understand that concern about getting notification and notice in the \$25,000 to \$100,000 range. We are willing to address it. We have been saying that in terms of increasing the threshold in other regards, other aspects of simplified procedure, other than the notice and notification of wait requirements, that the taxpayer needs relief now. Even with the best of efforts, it is going to be sometime before we can completely roll out an electronic commerce system.

So we favor expanding notice opportunities between \$25,000 and \$100,000. We have heard the concerns of this committee and subcommittee, and of the small business communities. We accept that. We have been worried about a full-blown linkage from \$25,000 to \$100,000.

Mr. ROWE. Thank you.

Thank you, Mr. Chairman.

Chairman BILBRAY. Thank you.

A couple of final questions on my part, unless Mrs. Clayton has some afterwards.

Mr. Moffitt, you have heard the comments, and certainly Mrs. Clayton's and Mr. Klink's concerns, about where small business will be if these three reforms are enacted. Secretary Preston and Mr. Kelman feel that small businesses with certainly 8(a) Programs and set-aside programs are protected.

Do you feel as confident as they do that with these reforms that the programs that this committee has championed over the years will be protected?

Mr. MOFFITT. I think until we see just exactly what the reforms boil down to, it is hard to answer that question. Certainly, though, I will say that SBA is involved in discussions with the Department of Defense and the Office of Federal Procurement Policy on all issues of procurement reform. Certainly, we are being heard. We are also talking with our small business customers to get their input and their concerns. Hopefully, when this process is done, small businesses will have even more opportunities through a more efficient procedure than there exists today.

Chairman BILBRAY. What is important is that you keep this committee informed as to these negotiations. We are not asking you to be a fink or anything, but we want you to come back and certainly tell us when these things begin to become a problem. Because the Small Business Administration could just get run over by some of the bigger agencies in these negotiations. We want to make sure. We are the advocate for small business. We were created as a committee to be an advocate for those who did not have any advocacy group here or on the Hill.

That is why the Small Business Committee continues to function to make sure that small businesses have a portion of the Federal pie, and are able to compete nationally in business.

I know that you have been negotiating with some of the other committees on Davis-Bacon reform.

Where does that stand right now?

Mr. KELMAN. The negotiations are still ongoing. The reporting and other requirements of Davis-Bacon for the large number of construction procurements under \$100,000 creates quite a significant bureaucratic burden for the Federal procurement process. The national performance review called for Davis-Bacon reform.

As you know, this has been an incredibly politically divisive issue over the years. It is a tough one. We have been, as I think your question implied, Mr. Chairman, talking mostly with the Senate side up to now, although we have kept some of the folks on this side of the Capitol informed as well.

Those conversations are still ongoing. It is a tough and decisive issue for us. Just from the procurement area, we sometimes have a little bit of hard ball on our side of business. But when you get over to the Davis-Bacon area, you really how they play in the big leagues.

Chairman BILBRAY. Thank you.

Do you have any questions?

Ms. CLAYTON. Yes, Mr. Chairman, and I will not be long. If you do not have a full answer for this, you can write me back.

I was struck also of making sure that small business is protected. You recommended that you will be delegating some of your contracting authority, and that you felt good about that.

I gather you feel that there is no involvement, or you will keep an involvement if you give your direct contracting authority to other Federal agencies?

Mr. KELMAN. Certainly, we would stay involved with the procuring activities and with the 8(a) firms. One of the advantages of giving up the burden of contract award and contract administration is that our personnel could spend more time counseling and assisting the 8(a) firms while they are performing the contracts. If the safeguard is included that we have the ability to withdraw the delegation to the procuring activity, if there is any problems with the contract award or administration, then I think that the overall system would be improved.

Ms. CLAYTON. Thank you.

Thank you, Mr. Chairman.

Chairman BILBRAY. Well, we appreciate the witnesses coming today. We do have another hearing tomorrow, where we will hear

from the industries and other people involved. We do appreciate it. We think that it was good testimony, and thank for coming.

The meeting is concluded.

[Whereupon, at 11:54 a.m., the subcommittee was adjourned, subject to the call of the chair.]

# APPENDIX

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**Opening Statement of the  
Honorable James H. Bilbray  
Chairman  
Subcommittee on Procurement, Taxation and Tourism  
Committee on Small Business**

**"Administration comments on Congressional procurement reform proposals and how they affect small business."**

**February 1, 1994**

It is my privilege this morning to welcome a distinguished panel of administration witnesses before the Subcommittee on Procurement, Taxation and Tourism. Their Testimony today will lead off two days of hearings in which this Subcommittee will kick off one of the most important streamlining debates that has been proposed by the Vice President's reinventing government proposal: reform of the federal procurement system.

For the better part of the last year, this subcommittee along with the Committee on Government Operations and the Committee on Armed Services on the House side, have devoted thousands of hours to developing proposals to reform, streamline and modernize the federal procurement system. Building upon the work of the Department of Defense's Section 800 panel and the Vice President's reinventing government proposal, the last several month's have seen a number of legislative proposals being put forth by the Congress. These include S 1587 by Senator Glenn, HR 2238 by Chairman Conyers, subsequent language developed by Chairman Conyers and Government Operations Ranking Member Clinger and this Subcommittee's HR 3586.

All these proposals have a great number of issues in common and, most importantly to this Subcommittee, a fundamental change to the bidding environment for small businesses. It is particularly in this area that this Subcommittee has concentrated its work.



Issues of particular importance to the small business include:

- \*Increasing of the small purchase threshold to \$100,000
- \*Creation of a commercial buying environment
- \*Notice requirements under \$25,000
- \*Small business reservation under \$2500
- \*Creation of government wide electronic commerce procedures
- \*Exemptions from socio-economic and small business requirements

Tomorrow, a number of small and minority business groups along with private business representatives will present the private sector's views of the present procurement reform proposals. Today, however, we look forward to the Administration's views on these issues.

Already a number of issues of concern have arisen. Legislation before the House has linked together increases in the small purchase threshold to creation of electronic commerce in the federal government. This subcommittee has placed particular emphasis on this issue as the sudden increase to \$100,000 will prove disastrous to small business access to solicitations under \$100,000. It is the Subcommittee's belief that electronic commerce procedures will prove to be the solution to both this access issue and to issues of current notification practices in contracts under \$25,000. In addition, the Subcommittee does feel a responsibility to encourage the creation of a government-wide electronic commerce network that will push federal procurement into the 21st Century. But let me reiterate, it is imperative that above all, access for small businesses to solicitations under \$100,000 be maintained. We share the Administration's

concerns that changes in the current oral solicitation procedures could create a bureaucratic nightmare and it is my hope that we can find a resolution that will ensure notice and protect the access of small businesses.

In addition, a number of concerns have arisen regarding the creation of a commercial buying environment and certain exemptions that are being sought from socio-economic and small business requirements. There has been a great deal of anxiety among the small business community on these issues and I would hope that the administration would expand on the benefits that small businesses will find in a commercial buying environment and the status of certain proposals that were of particular concern to the small business community.

Finally, let me reiterate, that it is the Congress's intention to pass significant legislation that is true to the Vice President's goals to streamline and reform the government. I agree that we need to decrease the bureaucracy, simplify the process and put responsibility back in the hands of government managers. A government manager should have the ability to go buy post-it notes and memo pads at Office Depot if his office needs some right away as opposed to having to place an order into the bureaucratic nightmare of the government procurement system. Because, we recognize the Administration's desires in this area, we are certainly willing to explore possible suggestions that have been made by the Administration regarding the small business reservation under \$2500.

Again, I welcome you here today and I look forward to the testimony that you will present.

OPENING STATEMENT by  
CONGRESSMAN RICHARD H. BAKER, RANKING MEMBER  
Subcommittee on Procurement, Taxation & Tourism  
February 1 and 2, 1994 Hearings on "Procurement Reform"

Mr. Chairman and other members of the Subcommittee, I thank you for calling these hearings on an issue of critical importance to our government - procurement reform. For years, many private and public groups have urged Congress to undertake comprehensive improvements to our federal acquisition system. I am genuinely pleased to take part in these hearings since they are designed to afford greater protection to small businesses nationwide from federal laws and regulations directives as we move to increase the efficiency and effectiveness of our government's purchasing system.

As I mentioned previously, the subject matter of these hearings is federal procurement reform. I have reviewed the written testimony offered by Mr. Steven Kelman, Administrator for Federal Procurement Policy, and it is abundantly clear that the proposed changes to the federal government's procurement process and procedures will impact small businesses in the U.S.

In Fiscal Year 1992, estimates indicate that the federal government spent more than \$200 billion on the purchase of goods and services. There are tens of million of these transactions, and they range from the major weapon-buying programs to two-by-fours to note pads. As you know, there are many pieces

of legislation in the House and Senate which concern federal procurement reform. I would like to take this opportunity to commend our Chairman for his work on H.R. 3586, the "Defense Acquisition Reform Act of 1993", as well as all of my colleagues at the House Government Operations Committee for their work on H.R. 2238, "The Federal Acquisition Act of 1993". Each one of those bills have made concrete statements concerning the role of small businesses in federal contracting in the future.

At this point, there is little doubt that Congress and the Administration are committed to federal procurement reform. The government needs this reform to guide its 142,000 employees dedicated to procurement. There are many issues that are of concern to the small business community, and I would like to take this opportunity to discuss them.

One of the major issues which concerns the small business community is the proposal to raise the simplified acquisition threshold from \$25,000 to \$100,000. Currently, the law allows agencies to make purchases of less than \$25,000 through those simplified procedures. The statutory requirements provide that the Department of Defense and the many civilian agencies post contracting opportunities under \$25,000. That posting guideline is designed to ensure that small businesses and local businesses are afforded adequate and timely notice of federal contracting opportunities. Federal acquisition regulations, however, encourage contracting officers to solicit oral offers below the amount of the small business purchase threshold. The proposed increase of

the SAT threshold to \$100,000 will affect over 45,000 new federal contracting opportunities worth billions of dollars. Many in the industry believe that the small business community is currently at great risk, and at this point I suggest that we proceed deliberately with the increase the SAT threshold as proposed by H.R. 2238. Linkage of the increase of the SAT threshold with electronic notification and electronic data interchange (EDI) appears to a reasonable way to achieve the goal of timely and adequate notice of federal contracting opportunities for small businesses.

Add to this discussion the federal government's intent to expand to an electronic marketplace, and you have a much more serious problem for small businesses throughout the country. Electronic notification and EDI will soon replace the Commerce Business Daily and the local posting requirements. The Defense Department and the civilian agencies will announce federal contracts on a nationwide electronic computer system. Eventually, the computer will serve a government-wide commerce system able to notify businesses of contracts, to make payments, and to engage in document interchange. EDI is intended to provide all businesses, including small businesses, with improved access to information about federal procurement. Undoubtedly, another result of this technological achievement is that businesses from all over the nation will be competing with one another for every single federal contracting opportunity.

The Administration, Congress, and many in the procurement industry want EDI and they want the SAT increased, so that the amount of time it takes to complete thousands of contract actions is decreased. I am firmly in favor of EDI and I would also like to see the SAT threshold increased, but I am very concerned with the manner in which we proceed on this issues. The threats to small businesses and local businesses are considerably increased if there is full implementation of EDI.

The problem I am concerned with is one that holds greater significance than government procurement reform. In my congressional district lies Fort Polk, home of the Joint Readiness Training Center and the 2d Armored Cavalry Regiment. This is the perfect time to commend all of the men and women stationed at Fort Polk for working so well with the surrounding business community over the years. Unfortunately, Fort Polk has been realigned and thousands of military and civilian personnel have left the Leesville, Louisiana community. Recently, the Army has taken several steps to reduce its overhead and operating expenses because of decreasing defense budgets. Also, it is one of the Defense Department sites designated for early implementation of EDI. All of those steps are the right ones given the set of circumstances, but a tremendous cost has been shifted to the Leesville community. I believe that the relationship between a military post and its surrounding community is a vitally important one. In many regards, it is a symbiotic relationship, and over the coming years with more military

downsizing and decreased military spending the need for cooperation between the two communities will only increase.

I believe that Congress and the Administration can actively promote a healthy relationship between military installations and their surrounding communities as we proceed with federal acquisition reform. In this regard, in the coming weeks I plan to introduce a bill to protect small businesses and local businesses from some of the risks of raising the simplified acquisition threshold and implementing electronic commerce. My bill could seek to define "local small business concerns", and protect them reasonably from the risks of being left out of the federal contracting process in the future. This legislation could set an attainable goal for all Federal agencies for each fiscal year by awarding a certain percentage of all procurement activities under the applicable simplified acquisition threshold to these local small business concerns. Another idea is to define those transactions which are inherently "local". Of course, there are many other issues -- the definition for local small businesses could be based on where the business concern is located, where a particular contract is scheduled for performance, where the contracting authority who is administering the contract is located.

The purpose of my legislation will be to strengthen procurement opportunities for local businesses, small businesses, economically depressed communities, and American communities nationwide. It seeks to ensure that the economies of the communities near federal contracting agencies, or

communities in which a federal contract is to be performed, are not adversely impacted as a result of federal acquisition reform and electronic data interchange. Mr. Chairman, I look forward to working with you and my other colleagues in the House in moving federal procurement reform in general, and this legislation in particular, forward so that we can assist in making our government more efficient while fostering an environment in which American small businesses can develop and continue to be the engine of economic improvement and job growth in our country.

I am also aware of the many other issues affecting small business that are being discussed as part of federal acquisition reform: small business and minority business subcontracting plans for commercial items, waivers of socioeconomic laws under pilot programs, expansion of the 1207 program to civilian agencies, and changes to the small business purchase reserve. I look forward to hearing the expanded debate this afternoon as we continue to educate and to enlighten Members of Congress on the finer points of these issues.

For these reasons, the testimony and comments over the next two days will serve to instruct the Subcommittee on these issues, and myself particularly as it concerns ongoing situations in my own congressional district. I thank you all of the panelists for their participation and thank the distinguished Chairman for exploring this critical issue at this time.



**STATEMENT OF CONGRESSWOMAN EVA CLAYTON****February 1, 1993**

**I want to thank the Chairman for holding this series of hearings on procurement reform. I agree with the Administration that there is indeed a more efficient manner in which the federal government could handle its acquisitions. However, I am concerned that the reforms suggested by the Administration MAY put many small businesses at a disadvantage. I am grateful to the Chairman for his many efforts to reach a compromise with Administration on this important issue.**

**I look forward to the testimony of witnesses appearing on behalf of Administration and to discussing with them the impact of procurement reform on small businesses.**

NOT FOR RELEASE UNTIL  
DELIVERY FEBRUARY 1, 1994

STATEMENT  
OF  
STEVEN KELMAN  
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY  
SUBCOMMITTEE ON PROCUREMENT, TAXATION, AND TOURISM  
OF THE COMMITTEE ON SMALL BUSINESS  
UNITED STATES HOUSE OF REPRESENTATIVES  
FEBRUARY 1, 1994

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the Administration's efforts to streamline the federal acquisition process and our views on various legislative proposals pending before the Congress. First, let me commend you for your efforts, which include introduction of H.R. 3586, the "Defense Acquisition Reform Act of 1993." I believe we are at a crossroads in the history of federal acquisition where we have an opportunity to make significant changes in procurement procedures that will improve federal agencies' ability to provide substantially increased value to taxpayers.

I also want to confirm to you and the Subcommittee members that the Administration supports the strongest level of small and minority business opportunities for participation in federal contracting. The Administration views small and minority owned business concerns as fundamental and critical sources of supply for the government. I believe that as we implement needed procurement changes -- through legislation and changes in management practices -- we will, at the same time, improve overall access by small and minority businesses to procurement opportunities.

Over the last 25 years, the federal acquisition system has evolved into a complex and burdensome maze of laws and regulations that discourage federal personnel from exercising prudent discretion and good business judgment. This makes the procurement process too cumbersome, and it fails to provide sufficient incentives for suppliers to deliver quality. At the October 26, 1993, White House briefing on procurement reform, the President stated that the current federal procurement system is "inefficient and wasteful...[and] adds significant costs without providing extra value." The recent reports of the Vice President's National Performance Review (NPR) and the Acquisition Law Advisory Panel to the U.S. Congress on Streamlining Defense Acquisition Law (known as the 800 Panel) have documented the need to streamline procurement procedures to increase access and competition in federal procurement, provide the best technologies available for national defense, and save the government money.

It is important to recognize as we begin to pursue the recommendation of the NPR to reduce the federal workforce by 252,000 that many of those positions are intended to be procurement positions. The Congress has already endorsed these cuts. We now need Congress to pass procurement reform legislation to allow us to make cuts without grinding the government to a halt.

I would like briefly to discuss our views on key streamlining initiatives that require legislation, several of which are recognized as being of particular concern to the Subcommittee and the small business community.

#### **Simplified Acquisition Threshold and Procedures**

Under current law, agencies are allowed to make purchases of \$25,000 or less using simple procedures while promoting competition to the maximum extent practicable. These small purchases, which account for approximately 98% of all procurement actions taken and 10% of the procurement dollars expended each fiscal year, can be completed relatively expeditiously. Purchases above \$25,000 normally take from several months to several years, depending on the nature of the agency's requirement. One of the key recommendations of the NPR and the 800 Panel is to authorize simplified small purchase procedures to be used up to \$100,000. This would allow use of simplified procedures for another 45,000 procurements with a total value of approximately \$3 billion. Also, the small business reserve

established by section 15j of the Small Business Act would automatically be raised to \$100,000. I am pleased that we have reached a general agreement that there be a Simplified Acquisition Threshold (SAT) of \$100,000, and I can assure you that we will work with the Subcommittee to develop provisions that will ensure that small and minority businesses have adequate notice of procurement opportunities in this new range of simplified acquisitions.

#### Improving Access and Reducing Administrative Burden Through an Electronic Commerce (EC) System

As you are aware, the President, in a Presidential Memorandum dated October 26, 1993, established a timetable for expansion of an EC system over the next few years to a governmentwide program. The widespread use of EC will substantially improve the efficiency of the procurement process. Furthermore, because of increased visibility of proposed procurements, EC will dramatically improve the notice small businesses receive of procurement opportunities. As EC becomes more fully implemented over the years, benefits to small businesses will include:

- 1) access to tens of thousands of small purchase solicitation opportunities daily, including those between \$10,000 and \$25,000;
- 2) the ability to select specific solicitations and submit quotes on those of interest electronically;

- 3) the ability to receive purchase orders electronically if they are the successful offeror and access to award information if they are not;
- 4) better agency compliance with the Prompt Pay Act resulting from payments being made through electronic funds transfer; and
- 5) significantly reduced paperwork burdens for both industry and government.

As is clearly indicated by the Presidential Memorandum, the Administration supports the use of electronic commerce as a vehicle for streamlining the acquisition process. We will continue to consider your concerns as we begin implementation of this technology in government procurement.

Provisions of H.R. 3586 and H.R. 2238 would link increases in the simplified acquisition threshold to electronic notification and electronic commerce. The Administration has opposed linking any increase in the simplified acquisition threshold to an EC requirement, because we have believed the taxpayer needs procurement streamlining now. However, we have heard, and we respect, the position of the small business community regarding linkage. We are willing in the context of discussions about fashioning an equitable package of provisions on issues important to this Subcommittee to discuss how we can resolve this issue, particularly by assuring notification and consideration of offers in procurement between \$25,000 and \$100,000.

**Purchases under \$25,000**

If we are to have any chance of reducing the procurement workforce to comply with the 252,000 goal, we must further simplify purchases under \$25,000. In order to truly simplify very small dollar purchases, we believe that removing the small business reserve for purchases under \$2,500 is essential. It is also essential that we maintain the current notification practices for oral solicitations for procurement at \$25,000 and below.

The Administration therefore recommends the following:

- (1) Amend section 15j of the Small Business Act to exempt purchases of \$2,500 or less from the small business small purchase reserve. The Vice President has repeatedly said that program officials need to be able to make these kinds of purchases, from readily available sources, without the additional bureaucracy of going through the extra step of procurement offices. Under current procedures, agencies must check SIC codes and size standards before making a purchase. This makes it difficult for program people not expert in procurement to make these decisions themselves. This initiative is an essential element to our efforts to empower program managers and reduce unnecessary administrative costs associated with purchases under \$2,500. It is a high Administration priority.
- (2) Remove the provisions of H.R. 3586 and 2238 that would modify current posting or notice practice for solicitations under \$25,000. Under current FAR provisions, contracting officers may

orally solicit quotes from three sources and award a small purchase contract. The provisions of these bills would require agencies to post a notice of small purchase opportunities 10 days prior to award. The 10 day posting requirement would impose a very substantial burden on a significant number of small purchases. As EC becomes operational, many of these opportunities will be on that system, so this is mostly a transitional problem while EC is being implemented. However, we need some latitude in this area during the transition or else we will be adding on significant requirements for new federal workers, as well as lengthening procurement lead times, at a time we are supposed to be streamlining procurement. This is simply unacceptable.

#### Reducing Obstacles for Obtaining Commercial Items

Both the NPR and the 800 Panel recognized that an essential element of maintaining an adequate industrial base for the requirements for our nation's defense is the conversion from a military-unique industrial base to an integrated commercial-military industrial base. To bring about this conversion, the government must adopt commercial contracting practices that facilitate the use of dual use technology and allow suppliers to use the same facilities to design and manufacture products for military use as they use for commercial products. In some instances, government-unique requirements have caused suppliers to go so far as to create subsidiaries whose sole function is to



produce for the government; as a result, the federal government pays higher prices for commercial products. Defense-specific production lines and defense-unique products must be reduced to a minimum.

We appreciate your efforts in providing a new definition for commercial products that will allow procurement of state of the art technology. The provisions of H.R. 2238 that permanently set the application of the Truth in Negotiations Act at a threshold of \$500,000 for all agencies and the exemption for commercial products are steps in the right direction in encouraging commercial vendors to engage in government contracting as well as to unifying military and commercial production.

We think more can and should be done to encourage commercial suppliers to do business with the government and to unify military and commercial production. It is in this context that the 800 Panel and the NPR have expressed concern about subcontracting plan requirements for commercial products. These government-unique requirements discourage some firms from doing business with the government. They encourage firms doing government business to segregate government and commercial business, so as to avoid these requirements on their commercial operations. We understand, however, that small business and minority subcontracting plans are important to members of this Subcommittee, and we respect these concerns, which we expect to be the topic of ongoing conversations as we move forward on this

legislation. We would like to work with you to achieve our mutual goals of encouraging use of commercial products and providing opportunities for small and small disadvantaged businesses.

#### **Testing Innovative Procurement Concepts**

The Administration supports authority for the Administrator for Federal Procurement Policy and the Administrator of the General Services Administration to waive specific provisions of law for the purpose of conducting pilots to determine if there are better ways of meeting program goals. Argument concerning what needs to be done has gone on far too long. An important way to determine what reforms will, in fact, improve our acquisition system is to conduct controlled tests and examine their effectiveness. The Vice President's National Performance Review (NPR) stressed that striving for innovation and allowing agencies to change their ways of doing business is essential to increasing the Government's productivity and effectiveness.

While the test authority proposed in H.R. 2238 provides a basis for a beginning, we believe that broader authority is necessary to improve the procurement system. We believe the bill should give, in keeping with the NPR Report, general test authority for the Administrator for Federal Procurement Policy and specific authority to the Administrator of General Services (in consultation with OFPP) to conduct tests in ADP procurement.

### Expanding the Section 1207 Program to Civilian Agencies

Finally Mr. Chairman, in response to the NPR's recommendation, the Administration believes that we can substantially increase the participation of small disadvantaged business by expanding the Section 1207 program, which is currently operating in DOD, to civilian agencies. The Section 1207 program is a valuable tool for assisting agencies in meeting their annual small disadvantaged business goal. We believe that the expansion of this program is necessary if we are to increase the economic contributions of small disadvantaged businesses to government programs.

In conclusion, Mr. Chairman, we will certainly want to continue to work with this Subcommittee and Congress in developing legislation that will significantly streamline the procurement process and support small businesses. That concludes my prepared remarks, Mr. Chairman. I will be happy to answer any questions you may have.

HOLD UNTIL  
RELEASED BY  
THE COMMITTEE

STATEMENT OF MRS. COLLEEN PRESTON  
DEPUTY UNDER SECRETARY OF DEFENSE, ACQUISITION REFORM  
DEPARTMENT OF DEFENSE  
TO THE  
SUBCOMMITTEE ON PROCUREMENT, TAXATION, AND TOURISM  
OF THE HOUSE COMMITTEE ON SMALL BUSINESS  
FEBRUARY 1, 1994

Mr. Chairman, thank you very much for the opportunity to appear here today. I am looking forward to working with this subcommittee as we together take the steps necessary to accomplish Acquisition Reform. We, both in the Department and others within the Administration, intend to work closely with you in taking those steps necessary to radically reform our Acquisition Process. I will do my best to answer the questions that are asked and provide you with any additional information you may require.

Mr. Chairman, with your permission I would like to make a few preliminary remarks which will develop the context of DoD's input to the Administration's position on provisions of S1587, HR 2238 and HR 3586 that you asked about.

#### **STATEMENT OF THE PROBLEM: WHY CHANGE IS NECESSARY**

The post-Cold War era poses new political, economic, and military security challenges to the United States throughout the world. By FY 1997, defense spending will have been reduced in real terms by over 40% compared to 1985. At the same time, the Administration is committed to maintaining a strong, effective force capable of deterring aggression against the United States and its allies and responding to threats anywhere U. S. national interests are at risk. In order to meet the new challenges to national security and the requirements of national domestic policy, acquisition reform is imperative.

Under the current system:

- DoD is often unable to acquire state of the art technology.
- DoD is often unable to buy from commercial companies -- even when their costs are cheaper or the commercial product is the only one DoD can get to meet its needs.
- DoD's costs of doing business are too great.

The DoD Acquisition system is a complex web of laws, regulations, and policies adopted for laudable reasons over many years. This system was intended to: ensure standardized treatment of contractors; prevent fraud, waste, and abuse; ensure that the government acquisition process was fair; check the government's authority and its demand on suppliers; and, further socioeconomic objectives. While the aim of each of these provisions is laudable, combined, the result is a system which is too cumbersome and takes too long to satisfy customer requirements. In addition, the system adds cost to the product procured in terms of the administrative burden placed upon both DoD and our suppliers.

Thanks to the ability and dedication of thousands of acquisition professionals in the Department of Defense, and the assistance of many contractors, DoD has been able to develop and acquire the best weapons and support systems in the world -- and win the Cold War. DoD and contractor personnel accomplished this feat not because of the system, but in spite of it. But they did so at a price -- both in terms of the sheer expense to the nation and eroded public confidence in the DoD acquisition system. It is a price the nation can no longer afford to pay. With reduced budgets, readiness and our technological superiority are being jeopardized by the increasing portion of the budget attributable to non-valued-added costs.

No one is suggesting that there can be a wholesale deletion of safeguards that have been designed to ensure the integrity of the government acquisition process, nor the wholesale removal of laws intended to further the social policies of this great nation. Rather, DoD must advocate a balancing of the risk associated with reducing oversight and the cost to both industry and the government of compliance. In the case of social programs, the costs of applying these policies without excluding particular types of purchases, must be balanced against the contribution to be made by requiring compliance without exception.

## **The Solution**

The world in which DoD must operate has changed beyond the limits of the existing acquisition system's ability to adjust or evolve. It is not enough to improve the existing system. There must be a carefully planned, fundamental re-engineering of each segment of the acquisition system if we are going to be able to respond to the demands of the next decade.

To meet the new national security challenges (political, economic and military) of the post-Cold War world, DoD must maintain its technological superiority and a strong, globally competitive national industrial base that can support the nation's future defense needs, by being able to: rapidly purchase commercial and other state-of-the-art technology and products; assist U. S. companies who are now predominantly dependent on DoD business to transition to dual-use production; aid in the transfer of military technology to the commercial sector; and, preserve defense-unique core capabilities. DoD must integrate, broaden and maintain a national industrial base primarily sustained by commercial demand but capable of meeting DoD's needs.

DoD must also reduce acquisition costs (including DoD's overhead costs) through the adoption by DoD of business practices characteristic of world-class customers. DoD must also be freed from applying government unique terms and conditions on its suppliers.

DoD has begun the pursuit of acquisition reform internally. Our first actions were:

- To develop a DoD position on all of the recommendations for legislative change contained in the 1800 page "Section 800" Acquisition Streamlining Panel report. The Panel was chartered in accordance with provisions in Section 800 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510. We placed particular emphasis on two Section 800 proposals: the removal of impediments to the acquisition of commercial products by waiving all government-unique

legislative requirements; and, streamlining the acquisition process by increasing the small purchase threshold to \$100,000, while also raising to \$100,000 other thresholds in legislative provisions that apply only to federal contractors. The remainder of the recommendations fall within the following categories: Contract Formation; Contract Administration; Major Systems and Testing Statutes; Defense Trade and Cooperation; Intellectual Property Rights; Service Specific Acquisition Laws; and, Standards of Conduct.

- After reaching a consensus internally, we began working with OMB, OFPP, GSA, and Vice-President Gore's NPR staff. The working group developed proposed legislation expanding the Section 800 recommendations to include all government agencies, and also incorporated existing legislative proposals in the NPR relating to acquisition. During this time, the Senate developed a proposed acquisition reform bill. In order to avoid confusion, the Administration decided not to introduce its bill. Instead, the Administration working group developed a "line-in-line-out" of the Senate bill, S.1587 (The Federal Acquisition Streamlining Act of 1993), that incorporated proposed Administration changes to the bill. Time did not permit consideration of the proposed changes during the last session of Congress. This hearing is the first of what we hope will be a series of hearings on this and other acquisition reform legislation in February.

- In addition to working on the formulation of the Administration's position on the Section 800 recommendations, we submitted to OMB a legislative proposal to waive certain statutes relating to seven pilot programs. (Congress had requested the submission of pilot program candidates in Section 809 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510.) The Pilot Programs would "jump start" acquisition reform by allowing us to immediately buy certain commercial and commercial-like items using commercial practices. The candidates proposed are: Commercial Derivative Aircraft (CDA); Commercial Derivative Engines (CDE); certain troop support items at the Defense Personnel Support Center (DPSC); Joint Primary Aircraft Training System (JPATS); Joint Direct Attack Munition (JDAM); Fire



Support Combined Arms Trainer (FSCATT); and Global Grid. The proposed pilot program bill, due to its inclusion of waivers to many socio-economic statutes, proved controversial within the Administration and agreement was not reached on its provisions until it was too late to be considered as part of the FY94 National Defense Authorization Act.

We will continue to pursue action on the draft pilot program bill in early February 1994. It is essential that we continue to press for adoption of the pilot program authorization. The proposed bill asks for legislative relief that is unique to the systems acquisition process, and has not been considered to the extent other recommendations have been (these laws were not reviewed by the Section 800 panel). Finally, even if the Section 800 reform package is enacted, it will take some time for regulations to be revised and personnel to be trained. In the meantime, we are reviewing all recommendations for regulatory relief to assist the programs in utilizing commercial products and processes. Putting the pilot programs in place now will achieve savings earlier, while also keeping the momentum for change.

- DoD also participated in the NPR effort by developing a strategy and action plan relating to its early priority issues as part of the Defense Performance Review. That report is awaiting White House approval and printing.
- Finally, we formed two PATs, composed of a cross-functional, cross-service, and cross-agency mix of individuals. The first PAT developed a time-phased plan for a 6-month, 12-month, and 24-month implementation of a standard Electronic Commerce/Electronic Data Interchange (EC/EDI) system for DoD small purchases. The plan provides for "one face to industry," and utilizes commercially available software for processing contract actions under the small-purchase threshold. This system will allow vendors to connect with commercial Value Added Networks that will access the entire DoD system at one primary and one backup site, and receive data on all planned purchases. It will also enable the vendor to provide a quote and the government to make an award electronically. Individual systems already in place in the

Services and DLA have shown tremendous improvements in productivity, lower item prices, and greater small business participation. DoD-wide implementation began in January 1994. I am also co-chairing the government-wide EC/EDI team established by the President's October 26, 1993 Executive Memorandum. This will assure DoD and other federal agency EC/EDI efforts are accomplished in a complementary fashion.

The second PAT is addressing the issue of military-unique product and process specifications and standards. This issue is one of the most difficult and complex issues facing the Department. The team was tasked to analyze why government specifications and standards continue to be preferred despite the current (3 year old) policy preference for commercial standards, and to develop a plan to implement a preference for commercial and performance standards and specifications unless a government-unique product specification or process standard is the only practical alternative to ensure a product or service will meet the user's needs. The PAT's draft report, which includes a detailed and forward-thinking plan of action, is being circulated within DoD for comment. The final report should be issued by mid-February. Additional PATs will be formed throughout 1994 to address other issues critical to acquisition reform.

Throughout this process, the concerns of small businesses have been paramount. Small businesses not only disproportionately feel the loss of business revenue, but also the unique burdens placed on government suppliers. They least of all can afford to bear the spillover of additional overhead costs of doing business with the government -- the additional employees to ensure compliance, lawyers to explain government-unique laws and regulations, and the legal risks associated with an inadvertent failure to comply with a rule foreign to commercial business practice, but required when selling to DoD -- onto their commercial products. We must do everything in our power to remove these burdens.

Management problems are internal issues that must be fixed by the Department. But Congress can help. Changes in Congress' approach

are the needed catalyst to foster the desire to make the cultural changes in DoD.

## **HOW TO RE-ENGINEER THE ACQUISITION SYSTEM**

The Clinton Administration has proposed the first steps in a broad plan to re-invent the federal acquisition system. The National Performance Review led by Vice President Gore, and the President's plan for economic development in the technological sector - Technology for America's Economic Growth, A New Direction to Build Economic Strength, provide guidelines for reforming the federal acquisition process. Using these guidelines and the recommendations of the Defense Acquisition Streamlining Panel (Section 800 panel) chartered by Congress, DoD has developed its vision of a re-engineered acquisition system. This system will ensure DoD will be able to maintain its technological superiority and a strong, globally competitive national industrial base that can support DoD's current and future needs, and DoD will be able to reduce its acquisition costs through adoption of business processes characteristic of world-class customers (including processes that encourage suppliers to do the same). This vision cannot be achieved through process improvement only. Because the world in which DoD now must operate has changed beyond the limits of the existing acquisition system's ability to adjust or evolve, the system must be totally re-engineered. There must be a carefully planned, fundamental re-engineering or re-invention of each segment of the acquisition system if DoD is going to be capable of responding to the demands of the next decade.

The re-engineering process must be: viewed through the framework of what DoD buys, how it buys it, and under what terms and conditions; while considering the goal of maintaining DoD's technological superiority and a strong, globally competitive national industrial base, and reducing acquisition costs through adoption of business processes characteristic of world class customers today.

Having set the stage, Mr. Chairman, I would like to respond to your request to specifically address three main areas within the bills: (1)

increasing the small purchase threshold; (2) creation of a commercial purchasing environment; and, (3) electronic commerce. I will attempt to address these areas in turn in the context of the three bills and the Administration's position.

### **FIRST, THE SIMPLIFIED ACQUISITION THRESHOLD**

As recommended by the Section 800 Panel, the Administration would like to see the creation of a Simplified Acquisition Threshold that does more than increase the old "small purchase limitation" from \$25,000 to \$100,000. We envision the creation of a Simplified Acquisition Threshold at \$100,000 that will:

- Add an inflation adjustment to the new \$100,000 threshold and double that figure for contingency operations such as Desert Storm.
- Exempt electronic commerce and commercial item purchases under the new threshold from statutory posting, synopsis and waiting period requirements.
- Exempt purchases under \$2,500 from certain mandatory source restrictions to facilitate credit card transactions.
- Broaden statutory exemptions from various socio-economic and certain other government unique laws for simplified acquisition purchases.

In conjunction with this initiative, we support the expansion of the section 1207 preference and price differential for Small and Disadvantaged Businesses, to the civilian agencies.

We believe that the creation of a Simplified Acquisition Threshold at \$100,000 will be of tremendous benefit to the Small Business Community. With it, we propose increasing the current reservation of contracts not greater than \$25,000 for small businesses (15 USC §

644(d)) to the \$100,000 Simplified Acquisition Threshold. By easing some of the government unique requirements for these types of procurements, it will attract more small businesses to do business with the government. It will also decrease the cost to small businesses of doing business with the government. Finally, it will reduce DoD's cost of doing business.

We also support continuation of existing procurement programs for minority business both above and below the \$100,000 threshold (i.e., the DoD 1207 program which permits DoD to reserve procurements for minority businesses and the 8(a) program of the Small Business Administration), but with a \$2,500 floor to permit the use of credit card purchases.

#### Benefits to Small Businesses.

- Increasing the value at which procurements are reserved for small business firms from the \$25,000 small purchase threshold to the \$100,000 simplified acquisition threshold will add about 40,000 new contracts with a value of \$2 billion to the small business reservation program. For awards below \$25,000 using small purchase procedures, where the small business reservation program is currently in effect, in excess of 75 percent of the dollar value of the awards go to small business. For awards between \$25,000 and \$100,000 only 43.6% of the dollar value now go to small businesses.
- It is not enough to just raise the threshold. It is also essential that purchases below the threshold be exempt from government unique clauses (e.g., those that specify the source of materials, specify the means of transportation, require the submission of reports by the contractor, or impose certain unique socio-economic provisions on contractors) or other special requirements.

## **SECOND, A COMMERCIAL PURCHASING ENVIRONMENT**

It is for these same reasons that we have requested relief from government unique rules when buying commercial products. The creation of a preference for the use of commercial items in all procurements will benefit the Small Business Community.

It will shift the current emphasis from military specifications to the use of performance specifications and off the shelf items utilizing the latest state-of-the art technology. This will make it easier for small businesses to compete for government contracts offering products they already manufacture for the commercial marketplace. It will encourage those small businesses already doing business with the government to develop alternate markets for their products and to become competitive in the world marketplace, thus ensuring their ability to survive as the budget the government devotes to procurement is decreased. It will decrease the cost of doing business with the government by allowing those small businesses engaged in both the commercial marketplace and the government marketplace to reduce their overhead by allowing them to eliminate government or military only production lines and government only requirements, i.e., cost accounting systems, audits and inspections. And, it will also allow the government to take advantage of technology advances as improvements to product lines occur without the cost of reviewing and redoing government/military specifications.

In order to facilitate this preference for Commercial Items acquisition laws and regulations must:

1. Exempt commercial item buys from a more complete list of statutory requirements on commercial vendors (including subcontracting plans). All three bills have provisions providing for exemptions from certain statutory requirements. § 801, HR.3586, § 7004, HR.3400 (the Conyers/Clinger Amendment), § 8004 and § 8005, S.1587 and. These provisions provide some, but not all of the relief recommended by the Section 800 Panel and the Administration. The Administration proposes an exemption from those statutory restrictions which add no value to commercial products. The bulk of these are unique to the government procurement process or they are

provisions which commercial companies will not or cannot comply with.

2. State a clear preference for commercial items over non-developmental items. All three bills have provisions expressing a preference for Commercial Items. §§ 101(a)(2) and 801 of HR.3586, § 7002 of HR.3400 and § 8001 of S.1587 provide a preference for commercial items over non-developmental items. The language in some of these provisions differs in some minor respects from the Administration's position and we would like to work with you on these differences as we produce the final legislative product. The Administration recommends a new commercial item chapter in Title 10 with a parallel new chapter amending the Federal Property and Services Act in Title 41.

3. Include a broadened commercial item definition to:

- encompass new commercial market entrants with leading edge technologies,
  - include leased items and modifications that do not substantially alter the nongovernmental character of the item, and
  - include the purchase of incidental services in combination with the commercial item.
- All three bills have provisions concerning the definition of commercial items. Section 102, HR.3586 mirrors the Administration's proposal. Section 7001, HR.3400 and § 8001, S.1587 define commercial items. However, we believe that these provisions should be broadened to ensure that we capture all the items in the commercial marketplace. The Administration recommends a broad definition of Commercial Item which allows for leasing of commercial items; permits more than "minor" modifications to commercial items; and preserves the concept of combining commercial items with incidental services and allows us access to

state-of-the-art technology not yet sold. The Administration also seeks to differentiate between commercial items and nondevelopmental items (including modifications), with a preference for commercial items, and then for nondevelopmental items.

4. State a mandatory exemption from cost or pricing data requirements for most commercial item acquisitions. All three bills have provisions exempting commercial item acquisitions from cost or pricing data requirements, § 122, HR.3586, § 1202, HR.3400, and § 1202 S1587. However, the language in all three provisions do not go as far the Administration believes is necessary to exempt state-of-the-art commercial items from cost or pricing data requirements. The Administration proposes a new structure for determining fair and reasonable pricing in the acquisition of commercial items in the absence of competition or an estimated market price. For example, we would like to get new state-of-the-art technology without getting cost or pricing data if the contracting officer can ascertain by other means that the price is fair and reasonable.

5. Limit government audit rights on commercial items. All three bills contain provisions concerning limited audit rights. The Administration has proposed that audit rights on commercial item procurements be limited to one year. Section 1204, HR.3400 and § 801, HR.3586 mirror this position. However, § 1204, S.1587 would extend these rights for 3 years.

6. Create a limited government remedy to recover any excess price paid, modeled on a commercial buyer's remedy. All three bills have provisions concerning a limited government remedy for price reduction in the event the government is over charged. See §124, HR.3586, § 1204, HR.2238 and § 1204, S.1587.

We would like to work with you on whether these provisions are necessary, and if so, what formulation best protects the government and is least intrusive to industry.



### Benefits to Small Business

From a contractor's perspective, purchases under the simplified approach are far less complex.

Non-automated small purchases can run about 12 pages in length, large purchase solicitations run 29 pages on the average and automated small purchase solicitations, are even less, 1 to 2 pages.

A significant part of this size difference is the result of the government unique clause requirements.

As the Section 800 panel noted: "It seems unlikely that any company not already engaged in the business of selling to the government would actually be willing to spend the money necessary to make the fundamental changes in the way that it conducts its business in return for a sale of \$100,000 or less. This may be particularly true of small businesses, which are the preferred recipients of contracts of this size."

Removing the burdens of unique laws only associated with contractors who sell to the federal government and their subcontractors will be of particular assistance to small businesses, who can afford the additional overhead associated with the additional employees needed to ensure compliance with government unique laws, lawyers to explain them and the legal risk associated with inadvertent non-compliance. Small businesses are also affected by the decline in defense business. We must facilitate their ability to diversify into commercial markets.

### Benefits to the Government.

- The impact of this change on the workload of DoD contracting staffs is reflected by the time that it takes to award small purchases as opposed to the time required to effect purchases above the small purchase threshold. Below the current \$25,000 small purchase threshold, the average lead-time is 26-days. Above the current \$25,000 small purchase threshold, the average lead time is 90-days for simple sealed bids and 210-days for competitive negotiation.

These timeframes are unacceptable to most customers and is the number 1 reason contracting officers are forced to look for ways around the current system.

- The number of new contracts between \$25,000 to \$100,000 is 40,000. If we could use simplified procedures for all of these transactions, it would result in a tremendous reduction in administrative burden for the government. Although the latest figures are not in, we believe that the \$100,000 simplified acquisition threshold could reduce the number of transactions requiring the use of large complex purchase procedures by as much as 15 to 20 percent.

### **THIRD, NOTICE AND ELECTRONIC COMMERCE**

#### **Current Law**

10 U.S.C. 2304(g)(1) and 41 U.S.C. 253(g)(1) authorize special simplified procedures for small purchases - currently those not in excess of \$25,000. The specific procedures used by the agencies are not constrained in statute except for requirements to post a notice for a period of not less than ten days in a public place at the contracting office issuing the solicitation for: all requirements over \$5,000; for the Department of Defense and \$10,000 for all other federal agencies (Section 18 of the OFPP Act and Section 8(e),(f), & (g) of the Small Business Act).

Under current law, in effect since 1978, agencies have determined that although notice is required to be posted, they need not wait 10 days before awarding a contract. In addition, when oral solicitations are used, no posting is made. For purchases in excess of \$2,500, solicitation by phone of at least three sources (if practicable two sources not included in the previous solicitation) is generally deemed sufficient to meet the competition requirement for procurements in excess of the small purchase threshold.

Purchases not in excess of \$2,500 may be made without obtaining competitive quotations if the contracting officer considers the price to be reasonable. Such purchases must be distributed equitably among suppliers. If practical, a quotation shall be solicited from other than the previous supplier.

As drafted, S.1587 would increase the Simplified Acquisition Threshold but not increase notice thresholds.

The Administration proposes to change the notice, synopsis, and wait periods to exempt purchases effected through the use of electronic commerce systems from these requirements.

The movement by the Administration to the use of Electronic Bulletin Boards and Electronic Commerce/Electronic Data Interchange (EC/EDI) will benefit the Small Business community. It will increase the number of opportunities small businesses will have to offer on government requirements. Through the use of Value Added Networks, every small business within the country will be able to access immediately, from a computer located at the business or a government office, government requirements. They previously would have had to visit (themselves or their agents) buying offices where notices were posted, rely on mailings, or the Commerce Business Daily.

Our goal, consistent with that of private industry, is to use EC/EDI to reduce time, overhead and the paper associated with doing business. It will also increase our ability to attract businesses to do business with the government by reducing the amount of paperwork involved in a government procurement and allowing on line submission of offers, acceptance and payments.

Competition, the use of commercial software and hardware and the use of commercial multiple value added networks to provide the final link between government information centers and our vendors is emphasized by DoD in the implementation of EC/EDI within the Department.

As this is implemented, contractors, through the use of single point of entry, will have access to notices of DoD-wide purchases that are on-line and will be able to: obtain copies of solicitations on-line, submit bids or offers to the purchasing offices on-line, and receive awards and payments on-line using standard commercial hardware and software that can also be used for other non-government purposes.(e.g., to communicate with commercial entities for the purpose of making sales and purchases).

Enhancement of EC capability directly supports acquisition reform particularly the proposed increase of the \$25,000 small purchase threshold to a \$100,000 simplified acquisition threshold.

Implementation of a contracting system using electronic commerce will provide 3 guarantees: notice to all vendors; all bids received by closing dates will be considered; and, a set time by which all bids must be received. It will also assure the government and vendors, that adequate notice of pending procurement actions will be provided, enabling them to compete for DoD contracts up to the proposed threshold. Access to notices of pending DoD procurements by vendors, particularly small businesses, will be improved greatly over the manual systems that are in place.

As stated previously, small purchases now are manually posted at procurement offices. This requires contractors or their agents to regularly visit these offices to learn of pending purchases. EC will permit vendors to access procurement information on-line in their own places of business.

### Benefits to DoD

Benefits to the Department of Defense will include a reduction in costs as a result of cutting the procurement administrative lead-time substantially for small purchases which are not subject to Commerce Business Daily synopsis requirements (at a test site, lead-time from the receipt of the requirement by the purchasing office to receipt of the award by the contractor was reduced from 29 days to 11 days).

Reductions in lead-time minimize inventory requirements, reduce personnel requirements by allowing each buyer to cover a greater number of orders, and eliminate backlog processing.

The Department does not intend to delay the enhancement of EC capability pending the passage of legislation to increase the small purchase threshold. As indicated previously, the PAT report details a comprehensive plan for enhancing the use of EC to support small purchases consistent with the existing \$25,000 threshold over a 6 month, 12 month and two year period. The report indicated that 154 DoD purchasing activities can be making small purchases using EC/EDI within the first six months. At the end of one year, these figures rise to 220 purchasing activities. The report concludes that by the completion of the two year period, 249 purchasing sites responsible for in excess of 80 percent of DoD's small purchases can be utilizing EDI systems that will permit contractors to utilize a single Value Added Network to obtain information on small purchases on a DoD-wide basis and, obtain solicitations, submit offers and receive awards via EDI means.

As part of this effort, the Department is funding efforts by the Small Business Administration and DoD's outreach program to educate/train small businesses in the use of the EC/EDI system.

While DoD is moving ahead with its EC in contracting effort, it is fully supporting the government-wide EC program that was initiated by the President on October 26, 1993. DoD is co-chairing that program with the General Services Administration. It is providing internal studies and data that were subsequently developed to support the government-wide effort. Eventually, the government-wide program will result in a system that will permit vendors to access a system, through a single point of entry that will permit on-line electronic contracting on a government-wide basis, including DoD.

## CONCLUSION

It is our position that Acquisition Reform will be a continuing effort focused on process improvement. The legislation we have asked of the Congress is only the first step in our process. As it evolves we may need additional help. But key in all of our efforts should be the principle embraced by the National Performance Review of providing the line manager/supervisor with as much authority as possible to do her/his job within the confines of broadly stated policy objectives. We have very good, smart, people. Help us give them the tools they need to do their job in today's fast paced technological environment. Hold them accountable for the exercise of their judgment through the establishment of metrics to evaluate their performance as opposed to in-depth and redundant oversight.

The people within DoD know the acquisition process must change, but they feel powerless to make significant changes. We need a new way of looking at the acquisition process - one that will embolden DoD employees to look for new more efficient and effective ways to husband taxpayer resources while protecting national security interests.

Acquisition reform shares a common border with many of our most important goals: saving the taxpayer money; reinventing government; strengthening our military; and improving our economy. Removing requirements that are uniquely imposed on federal contractors is the single most important step DoD, the Administration, and Congress can take to help defense contractors compete successfully in today's global commercial marketplace, to ensure DoD will have access to a national industrial base that can meet its needs, to ensure DoD will have access to the latest state-of-the-art technology, and to assist DoD in reducing its acquisition costs.



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416



STATEMENT OF ROBERT J. MOFFITT  
ASSOCIATE ADMINISTRATOR FOR PROCUREMENT ASSISTANCE  
U.S. SMALL BUSINESS ADMINISTRATION  
BEFORE THE  
HOUSE COMMITTEE ON SMALL BUSINESS  
SUBCOMMITTEE ON PROCUREMENT, TAXATION, AND TOURISM  
FEBRUARY 1, 1994

INITIATIVES ON PROCUREMENT REFORM

Mr. Chairman and members of the committee, I am Robert J. Moffitt, Associate Administrator for Procurement Assistance for the Small Business Administration (SBA). Erskine Bowles, SBA's Administrator, thanks the chairman and the committee for inviting the SBA to discuss with you the Small Business Administration's comments regarding legislative proposals on procurement reform. He has asked that I appear today on behalf of the Agency.

#### SUPPORT FOR PROCUREMENT REFORM

The SBA believes there is a need for procurement reform and believes the results could be good for small business, for the taxpayers, and for the government. Small business is a key stakeholder in procurement reform. Therefore, it is important to keep in mind during this reform process the concerns of small business. The SBA has long advocated that the small business community needs to have: 1) adequate notice of available Federal Government contracts; 2) the fair opportunity to participate in these contracts; and 3) reasonable safeguards to protect it during all phases of the procurement process.

At the White House on October 26, 1993, President Clinton and Vice President Gore announced the Administration's goals and initiatives regarding procurement reform. The President's goals are to streamline procurement, save money, expand small business access, and implement a government-wide electronic commerce system. We believe these goals must be balanced with providing



safeguards and assistance to small and small disadvantaged businesses to insure that they receive their fair share of federal procurements.

There are several bills currently pending that address the issue of procurement reform. On July 28, H.R. 2238, the Federal Acquisition Improvement Act of 1993, was reported out of the House Government Operations Committee. This bill would amend acquisition law throughout the federal government. On October 26, S. 1587, the Federal Acquisition Streamlining Act of 1993, was introduced in the Senate. This bill includes key provisions from the DOD Section 800 Panel Report and the National Performance Review Report. On November 20, your bill, Mr. Chairman, H.R. 3586, the Defense Acquisition Reform Act of 1993, was introduced in the House. This bill would amend laws relating to Defense acquisition.

While these initiatives are similar in many ways, there are several differences between them in areas that are of significant interest to small business. There are certain key issues for small businesses that need to be considered in any procurement reform legislation.

#### **SMALL PURCHASE THRESHOLD AND ELECTRONIC COMMERCE**

Raising the small purchase threshold would be beneficial to small business as long as there are adequate ways of notifying

small business of procurement opportunities. As I testified on May 15, 1993, before the Legislation and National Security Subcommittee of the Government Operations Committee, the SBA believes that an Electronic Commerce/Electronic Data Interchange (EC/EDI) procurement system to acquire goods and services could be very helpful in giving small businesses the ability to easily identify federal procurement opportunities. However, EC/EDI would only be helpful to small business if it is implemented and used by the government procurement centers.

Currently, at some buying activities, small business gets only 50% of the dollars available for the procurements that are reserved for small business. A principal reason for this is that small businesses are not aware of these contract opportunities. The SBA feels that the use of EC/EDI will vastly improve the awareness of contract opportunities for small business. Since I last testified on this subject, the President has urged his strong support for electronic commerce in an executive memorandum, dated October 26, 1993. The memorandum directs implementation of a complete Government-wide system of electronic commerce by January, 1997. The memorandum notes that the electronic commerce system will particularly benefit small, small disadvantaged, and women-owned businesses by providing greater access to Federal contracting opportunities. Furthermore, the President's memorandum directs the Management Council that will be responsible for the implementation of the electronic commerce

system to establish a capability for the exchange of standardized notices for Government-wide implementation.

In my previous testimony, I mentioned the results of one of the first operational EC/EDI systems being tested at Wright-Patterson Air Force Base. I think the results are significant and should be discussed again today. The results show dramatic increases in contract awards for small business. In the purchases made under this test system, small business has effectively increased the proportion of awards over the previous year from the 40% range to the 90% range. At the same time, the government has saved over 10% on purchases because of the increased competition. SBA interprets these results as showing a potential for a great boost to small business involvement while producing government savings and streamlining the procurement process.

The implementation of EC/EDI will not only be of benefit to small business by making information about intended small purchases more readily available to small firms but also for the Government and taxpayers by reducing paperwork and personnel requirements and generally increasing efficiency while reducing costs. In addition to reducing paperwork, which benefits both contracting personnel and small businesses, it is also simple for the firms using the system to submit their quotes.

The small business community has stressed that it is important that EC/EDI systems be functionally compatible from agency to agency and procurement center to procurement center. Otherwise it would be extremely expensive for small businesses to access the different systems. Many functionally different systems requiring different software packages would discourage, rather than stimulate, the interest of small businesses.

#### SBA DELEGATION OF CONTRACTING AUTHORITY

The bills, with the exception of HR 2238, would allow direct contracting with 8(a) firms. As you know, SBA now enters into contracts with federal agencies and subcontracts performance to eligible 8(a) firms. This requires a great investment of time by procuring agency personnel and the SBA. Time and paperwork could be saved if SBA entered into agreements with federal agencies and departments to delegate contract award and administration authority to federal agencies.

SBA supports direct contracting, only if certain safeguards would be included. We believe that Government agencies would be encouraged to provide greater contracting opportunities to 8(a) firms if there were less paperwork involved in the 8(a) contract award and administration process. To do this, SBA should be allowed to delegate contract award and administration functions to procuring agencies. However, we believe that it is important that SBA retain the right to revoke this delegated authority if

an agency violates SBA's regulations, federal acquisition regulations, or other terms of the agreement. SBA should retain the right to continue to contract for the 8(a) program on specified terms, and SBA should also retain authority to resolve disputes regarding 8(a) contract matters.

#### TEST PROGRAMS

H.R. 2238 contains a proposal for test programs that include some provisions that cause our small business customers concern because they would likely result in the prequalification of sources and prejudgment of capabilities. The provisions of this bill would permit the introduction of a variety of tests, including prequalification.

The SBA has historically opposed prequalification of offerors as a permanent feature of legislation because it tends to discourage newly established small businesses from involvement in the government contracts process. Additionally, we believe that prequalification undermines the right of small business to an SBA review under the Certificate of Competency Program.

#### TECHNICAL DATA RIGHTS

Although this issue is not addressed in the legislation before us, it is a topic of importance that needs to be mentioned. The issue of Technical Data Rights is complex, and

various business groups are divided on the proposed changes contained in the Section 807, Technical Data Advisory Committee report. The Committee, in outlining their recommendation, had a very difficult task trying to decide the issues of ownership, repository, and availability of technical data.

We have been approached by small business groups representing both sides of the issue--those with development and design capabilities, and those with only the capability to manufacture spare and replacement parts.

We believe that if the government funds, either directly or indirectly, the development of a process or product, then the technical data describing that process or product should be made available, at the government's discretion, for competitive purposes. Because ownership of technical data is a controversial issue, with significant impact on small business and the government, I urge that careful consideration be given to the needs of small business manufacturers before a final position is accepted.

#### **CERTIFICATE OF COMPETENCY PROGRAM**

The SBA would also like to comment on a recommendation made by the DOD Section 800 panel which we strongly support. Simply put, the panel recommended the repeal of the provisions that related to SBA's Certificate of Competency (COC) Program.

Section 804 of the Defense Authorization Act of 1993 which changed the COC process for DOD, NASA, and the Coast Guard actually lengthened the procurement process, complicated the job of the contracting officer, and weakened the COC process. We support the panel's recommendation to repeal this provision. We certainly do not support expanding this section to include all civilian agencies.

#### SMALL DISADVANTAGED BUSINESS PROGRAM

Finally, as we have testified in the past, the SBA supports extending the benefits of the Small Disadvantaged Business Program now operating in the Department of Defense. We believe that all procuring agencies should be given the authority to establish set-asides for small disadvantaged business (and the prerogative of using a ten percent evaluation preference for small disadvantaged businesses) in order to enhance the possibility that they can increase awards to that segment of the small business community.

Mr. Chairman, procurement reform is a complex issue that must achieve a careful balance between two of the goals the President has outlined for his Administration: streamlining and simplifying the federal government, and supporting small, small disadvantaged, and women-owned businesses. The SBA appreciates this opportunity to let our views be known on this important



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issue, and we look forward to continuing to work together with the small business community, the Congress, and the Administration in reforming procurement laws.

Thank you again for the opportunity to offer comments on these procurement reform issues. I would be glad to respond to any questions you may have.







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